



State of Mississippi

A Performance Review of the Construction and Management of the Mallard Pointe Golf Course Located at John Kyle State Park

**From the Office of State Auditor
Phil Bryant**

Report # 58
April 16, 2001

Report Summary

At the request of the State Auditor, the Performance Audit Division of the Office of the State Auditor conducted a performance review of the construction and subsequent management of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this review was to determine if best management practices were followed in the golf course construction and to determine if the golf course management firm (Firm) was properly monitored during the "grow-in" phase of the course and once it was operational.

House Bill 1673 of the 1994 Legislative Session authorized \$5 million for the construction (at John Kyle State Park) of an 18-hole golf course, a 9-hole par 3 course, and supporting structures related to the golf course.

As a result of no preplanning and inadequate contract management by the Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management, the State of Mississippi spent \$1.5 million in additional expenditures and received a substandard project. The 9-hole par 3 course would soon wash away and the remaining course would continue to operate at a loss to the State.

Our review found problems with contract management at the Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management (see Section 2). In addition, problems were found with the Department of Wildlife, Fisheries and Parks' monitoring of the Firm (see Section 3).

More detailed information is included within the report.



**Office of the
State Auditor of Mississippi
Phil Bryant**

Report # 58
April 16, 2001

A Performance Review of the Construction and Management of the Mallard Pointe Golf Course Located at John Kyle State Park

At the request of the State Auditor, the Performance Audit Division of the Office of the State Auditor (OSA) conducted a performance review of the construction and subsequent management of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this review was to determine if best management practices were followed in the golf course construction and to determine if the golf course management firm (Firm) was properly monitored during the "grow-in" phase of the course and once it was operational..

This review addressed several issues concerning the construction of the golf course at John Kyle State Park.

Section 1 - Overall Observations

The following observations were made during the OSA's review of the Mallard Pointe Golf Course construction project:

- Preplanning was not involved in the construction of the Mallard Pointe Project. Therefore, the amount allocated by the Legislature to fund the project (\$5,000,000) was simply an estimate. In addition, the location of the golf course was selected without the performance of soil analyses, population analyses, or revenue projections. (Page 1-1)
- Under the current operations of the Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management (Bureau) the Using Agency has no authority in the acceptance/nonacceptance phase of the project, which could result in the Using Agency being forced to take an incomplete or inadequate project. (Page 1-2)

For more details see Section 1.

Section 2 - Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management (Bureau)

Our findings reveal the State of Mississippi spent over \$1.5 million more than the original contract of \$5 million for an **incomplete** project (The 9-hole par 3 course does not currently exist). Problems were noted in the following areas:

- Delays in Awarding the Construction Contract (Page 2-9)
- Erosion Prevention Measures (Page 2-9)
- Violation of Substantially Complete Date (Page 2-12)
- Grassing (Page 2-13)
- Grow- In (Page 2-18)
- Change Orders (Page 2-19)

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- Liquidated Damages (Page 2-21)
- Performance Bond (Page 2-23)

For more details see Section 2

Section 3 - The Department of Wildlife, Fisheries and Parks (DWFP)

Problems were noted during the “grow-in” phase of the golf course (Page 3-4). Also, problems were noted with DWFP’s current monitoring of the Firm (Pages 3-7 and 3-11).

For more details see Section 3.

Contact

Mitchell H. Adcock, CPA, CIA, CFE
Performance Audit Division Director
(601) 576.2800

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State of Mississippi

OFFICE OF THE STATE AUDITOR
PHIL BRYANT
AUDITOR

April 16, 2001

Governor Ronnie Musgrove
Lt. Governor Amy Tuck
Senator Jack Gordon, Chairman of Senate Appropriations
Senator Bill Minor, Finance Committee
Representative Tim Ford, Speaker of the House
Representative Charlie Capps, Chairman of House Appropriations
Representative Billy McCoy, Chairman House Ways & Means Committee
Mr. Gary Anderson, Executive Director, Department of Finance & Administration
Dr. Sam Polles, Executive Director, Department of Wildlife, Fisheries and Parks

Dear Madam / Sirs:

Based on the authority under MS Code 7-7-211, I requested the Performance Audit Division of the Office of the State Auditor to conduct a performance review of the construction and subsequent management of the Mallard Pointe Golf Course at John Kyle State Park. For some time, this agency has received inquiries and complaints from taxpayers and cooperating witnesses who expressed concerns about the Mallard Pointe Project. A preliminary review of the ongoing expenditures and anecdotal examples by public officials involved in the project suggested a strong need for a thorough review. The following is the result of this exhausting effort.

This report is not designed to place individual fault but rather identify areas where the system failed. The result was an expenditure of \$6.5 million dollars for a golf course that currently operates at an annual loss of nearly \$200,000. A portion of the project, the nine-hole par 3 course, washed away soon after acceptance and was never restored. The two state agencies involved, Department of Wildlife, Fisheries and Parks and the Department of Finance and Administration's Bureau of Building, Grounds and Real Property Management, continue to have conflicting positions on the reason for the project's difficulties. Their responses are enclosed in this comprehensive report for your review.

Recommendations in the report include amending current law to require pre-planning for all capital improvement projects over \$1,000,000 and stricter contract management. Additionally, consideration should be given to the leasing of both the Mallard Pointe Golf Course and the Quail Hollow Golf Course at Percy Quinn State Park

GOVERNOR RONNIE MUSGROVE

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LT. GOVERNOR AMY TUCK

SENATOR JACK GORDON, CHAIRMAN OF SENATE APPROPRIATIONS

SENATOR BILL MINOR, FINANCE COMMITTEE

REPRESENTATIVE TIM FORD, SPEAKER OF THE HOUSE

REPRESENTATIVE CHARLIE CAPPS, CHAIRMAN OF HOUSE APPROPRIATIONS

REPRESENTATIVE BILLY MCCOY, CHAIRMAN HOUSE WAYS & MEANS COMMITTEE

MR. GARY ANDERSON, EXECUTIVE DIRECTOR, DEPARTMENT OF FINANCE & ADMINISTRATION

DR. SAM POLLES, EXECUTIVE DIRECTOR, DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS

to an independent golf course management firm. This would reduce the demand upon state agency personnel and resources while controlling or eliminating operating losses. Obviously, all Internal Revenue Service regulations and conditions must be followed in order to protect the tax-exempt status of the bonds which financed the project.

Once you have had an opportunity to look over this performance review, please feel free to respond to our findings or recommendations. I look forward to hearing from you.

With best regards, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Bryant". The signature is fluid and cursive, with the first name "Phil" and last name "Bryant" clearly distinguishable.

Phil Bryant
State Auditor

PB/dm

enclosure

Section 1 - Overall Observations

Overall Observations

During the Office of the State Auditor's review of the Mallard Pointe Golf Course construction project, several items came to our attention that should be addressed in order to improve the future contract management by the Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management (Bureau).

Preplanning

Preplanning was not involved in the construction of the Mallard Pointe Project; therefore, the amount allocated by the Legislature to fund the project (\$5,000,000) was simply an estimate. In addition, the location of the golf course was selected without the performance of soil analyses, population analyses, or revenue projections.

Preplanning allows the State to determine a reasonable estimate of how much the construction project should cost and to determine the appropriate project site. The Bureau has established policies regarding preplanning. According to Section 200.4 (B) of the Bureau Procedure Manual, 1996 Revision:

In order to establish creditable construction estimates, some major capital improvements or repair and renovations may require Program preparation, Schematic Document planning and Site Selection. After Preplanning has been completed, the Legislature may consider funding for construction based on the reported estimate.

The manual also states in Section 200.4 (C)(1): "*Ideally, all Capital Improvement Projects in excess of \$1,000,000 should be Preplanned one (1) year and funded the next.*"

Preplanning was not involved in the construction of the Mallard Pointe Golf Course. Therefore, the amount allocated by the Legislature to fund the project (\$5,000,000) was simply an estimate. In addition, the location of the Mallard Pointe Golf Course was dictated by the Legislature, without the performance of any studies, such as: soil analyses, population analyses or revenue projections. The golf course was built on highly erodible soil, which contributed to the problems during its construction. **In addition, the State's golf revenue has been less than \$500,000 each year since opening the course, substantially less than the operating cost. After payment of the golf management firm's fee, the State recognizes a loss on operating the course (approximately \$200,000).**

The Legislature has addressed preplanning for projects involving state-owned public buildings. Section 31-11-30 of the Mississippi Code of 1972, Annotated approved April 30, 2000 states:

Every capital improvements project, costing One Million Dollars (\$1,000,000) or

more, which is developed to repair, renovate, construct, remodel, add to or improve a state-owned public building shall be funded by the Legislature in two (2) phases. . . . Phase 1 shall be a preplanned capital improvements project budget projection for the project and shall be funded first . . . the term “preplanned” . . . means the preliminary planning that establishes the program, scope, design and budget for a capital improvements project. (Emphasis added by OSA)

The Legislature should consider amending the statute to require preplanning for all capital improvement projects over \$1,000,000, not just those involving a state-owned building. The preplanning should include soil analyses, population analyses, or revenue projections to determine the appropriate project location.

Acceptance/Nonacceptance of Project by Using Agency

Under the current operations of the Bureau the Using Agency has no authority in the acceptance/nonacceptance phase of the project, which could result in the Using Agency being forced to take an incomplete or inadequate project.

Bureau policies allow the Using Agency to participate in the final inspection of the project; however, the Using Agency is not allowed to accept/reject the project. Final acceptance of the project is given by the Bureau. This places the Bureau in a dictatorial relationship with the Using Agency, whereby the Using Agency is forced into taking the project, whether or not they accept it as completed.

The Bureau should consider allowing the Using Agency to give a formal acceptance or nonacceptance of a project. If the Using Agency does not accept the project, they should provide a reasonable explanation, along with supporting documentation to the Bureau.

**Section 2 - Department of Finance and Administration - Bureau of Building,
Grounds and Real Property Management**



State of Mississippi

A Performance Review of the Construction of the Mallard Pointe Golf Course Located at John Kyle State Park

**From the Office of State Auditor
Phil Bryant**

Report # 56
April 16, 2001

Report Summary

At the request of the State Auditor, the Performance Audit Division of the Office of the State Auditor conducted a performance review of the construction of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this review was to determine if best management practices were followed in the golf course construction.

House Bill 1673 of the 1994 Legislative Session authorized \$5 million for the construction (at John Kyle State Park) of an 18-hole golf course, a 9-hole par 3 course, and supporting structures related to the golf course.

As a result of no preplanning and inadequate contract management by the Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management, the State of Mississippi spent \$1.5 million in additional expenditures and received a substandard project. The 9-hole par 3 course would soon wash away and the remaining course would continue to operate at a loss to the State.

More detailed information is included within the report.



**Office of the
State Auditor of Mississippi
Phil Bryant**

Report # 56
April 16, 2001

A Performance Review of the Construction of the Mallard Pointe Golf Course Located at John Kyle State Park

At the request of the State Auditor, the Performance Audit Division of the Office of the State Auditor conducted a performance review of the construction of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this portion of the review was to determine if best management practices were followed in the golf course construction.

This review addressed several issues concerning the construction of the golf course at John Kyle State Park.

Findings

As a result of no preplanning and inadequate contract management by the Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management (Bureau), the State of Mississippi spent over \$1.5 million more than the original contract of \$5 million for a substandard project.

1. Delays in Awarding the Construction Contract (Page 2-9) - As stated by all parties involved, timing of the construction of the golf course was imperative, with delays detrimental to the project. Due to a bid protest, the Bureau was forced to delay awarding the construction contract which extended the project's completion and contributed to the construction problems encountered.
2. Erosion Prevention Measures (Page 2-9) - The Contractor's failure to properly install erosion prevention measures, described in the original contract and communicated to the Contractor on several occasions by the Department of Environmental Quality (DEQ) and the Corps of Engineers, resulted in substantial erosion damage and construction delays.
3. Violation of Substantially Complete Date (Page 2-12) - The contract bid process described project completion dates as imperative, however construction was not substantially complete by the contract date.
4. Grassing (Page 2-13) - Bureau contract specifications allowed the Contractor to plant grass (Bermuda) beyond the industry standard (August 15), resulting in grow-in problems, erosion, and additional expenditures to the State of Mississippi.
5. Grow- In (Page 2-18) - While grass "grow-in" was discussed in the planning phase, "grow-in" was not part of the Contractor's responsibilities, resulting in confusion between the Bureau and DWFP which contributed to golf course damage.
6. Change Orders (Page 2-19) - The Bureau approved more than \$1.5 million in Change Orders to re-perform original contract work. Also, the Bureau approved \$380,000 in Change Orders after work had been performed by the Contractor.
7. Liquidated Damages (Page 2-21) - It appears the Bureau made a decision to ignore the contractual provision regarding the July 31, 1996 completion date and approve an extension by post construction Change Orders. These actions eliminated any potential for liquidated damages.
8. Performance Bond (Page 2-23) - The Bureau noted construction problems early on with erosion issues and

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completion date issues. Because the Contractor was bonded, the Bureau could have chosen to pursue the Contractor's performance bond to complete the project without additional expense to the State.

Recommendations

In general, the Bureau should improve the management of all construction contracts to protect the interest of the State of Mississippi.

1. The Bureau should enforce all aspects of construction contracts for which it is responsible. If the Bureau seeks to change a contract, it should justify and document those changes as in the best interest of the State. This should include contract specifications and completion dates.
2. When the Bureau lacks expertise, an independent consultant should be engaged to substantiate important contract specifications. In the case of a golf course project, an agronomist knowledgeable of the climate in Mississippi should help in planning the construction timeframe and the grassing dates of the course. This should ensure industry standards are included in the contract specifications and possibly reduce the construction risks.
3. Unless the work is unforeseen and necessary, the Bureau should not approve Change Orders for work that is already included as part of the original scope of the contract. If additional work is required due to the Contractor's fault or contract specification, the Bureau should pursue liability claims instead of Change Orders as the contract requires.
4. The Bureau should ensure all Change Orders are approved prior to the performance of the described work, in accordance with Bureau policies and the opinion of the Office of the Attorney General.
5. The Bureau has the fiduciary obligation to ensure compliance with all contract specifications, including the assessment of liquidated damages. Since the Bureau has no legal authority to release contractors from liquidated damages, the Bureau should review all existing projects to ensure the liquidated damages contractual provision is being enforced, where applicable, or removed from future contracts.
6. When a Contractor fails to perform in compliance with the contract specifications, the Bureau should seek performance from the Contractor's bonding company. If the Bureau determines filing with the bonding company is not necessary, reasons for this determination should be documented in the project files.

Contact

Mitchell H. Adcock, CPA, CIA, CFE
Performance Audit Division Director
(601) 576.2800

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Agency Response

Introduction

Purpose

At the request of the State Auditor, the Performance Audit Division (Division) of the Office of the State Auditor (OSA) conducted a performance review of the construction of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this review was to determine if best management practices were followed in the golf course construction.

The performance review will:

- provide background information on the authorization for constructing the golf course;
- provide information on the role of the Department of Finance and Administration - Bureau of Building, Grounds and Real Property Management (Bureau), the Architect, the Contractor, and the Department of Wildlife, Fisheries and Parks (DWFP); and
- evaluate the construction of the golf course.

Scope

The scope of the performance audit consisted of several issues concerning the construction of Mallard Pointe Golf Course at John Kyle State Park. Only the issues regarding the Bureau which were found to have merit are detailed in the following report.

Method

In conducting the review, the Division performed the following procedures:

- reviewed applicable state statutes, appropriation bills and Attorney General Opinions;
- reviewed Bureau policies and procedures;
- interviewed appropriate personnel;
- reviewed and analyzed information relevant to the construction of the golf course; and
- performed other necessary tests and procedures.

Background

Authorization for Construction of Golf Course

In 1994, the Mississippi Legislature authorized, in House Bill 1673, the construction of a golf course at John Kyle State Park. The Bill authorized \$5,000,000 for

development and construction of . . . an 18-hole golf course, a 9-hole par 3 course, a driving range, practice areas, a clubhouse facility which shall include service of food and beverages, a cart storage facility, maintenance areas and equipment, executive cabins to be used at the park in conjunction with the golf course, and other appurtenances related to the operation of such golf facilities and all furnishings and equipment.



Welcome Sign at Mallard Pointe Golf Course

Two subsequent Senate Bills in the 1995 Legislative Session appropriated funds to the Department of Finance and Administration granting the Bureau discretion in the allocation of the funds to existing projects, which included Mallard Pointe. As a result, an additional \$1,566,043 was allocated to the construction of the golf course and its facilities at John Kyle State Park, bringing the total legislatively authorized amount to \$6,563,707. Currently the 9-hole par 3 course is not in operation.

The Role of Bureau of Building, Grounds and Real Property Management

The duties and responsibilities of the Bureau are outlined in Sections 31-11-1 through 31-11-39 of the Mississippi Code of 1972, Annotated. According to Section 100.6 of the Bureau Procedure Manual, 1996 Revision: *“The primary function of the Bureau is to properly administer funds appropriated to it by the Legislature in accordance with state laws, regulations and established procedures in a business-like manner.”*

The Bureau is responsible for administration, management, and decision making for public building projects constructed with funds appropriated by the Legislature. If a state entity’s construction project is funded with self-generated funds or if the funds have been placed under the direct control of the entity constructing the project, the Bureau will provide assistance at no charge. In the construction of the golf course, the Bureau acted

as “Owner.” As defined in the contract documents

“The Owner, as used in these documents, refers to the Division of General Services, Office of Building, Grounds and Real Property Management, acting for and on behalf of the State of Mississippi and for the benefit of the institution, agency or department for which the work under this Contract is being performed.” As the “Owner”, the Bureau was ultimately responsible for ensuring the project was completed in accordance with contract specifications. In addition, the Bureau was responsible for the selection of the architect and awarding the construction contract.

Architect Selection Process

The Bureau followed the architect selection process outlined in Section 400.6 of the Bureau Procedure Manual, 1996 Revision.

General Contractor Bidding Process

The Bureau followed the bid process outlined in Section 31-7-13 (c) of the Mississippi Code of 1972, Annotated.

The experience of the prospective Contractor was an important issue as documented by the Architect in a memo to the Bureau and DWFP dated January 19, 1995:

This is not a building. . . . The shaping of the earth is an artistic endeavor though it is accomplished with large machines and common people. It is experience with the process and the talent and understanding of the operators of those machines that make the difference between a facility that becomes a revenue center for the State or a drain therein.

The lowest bidder based on the first bid proposals was recommended by the Architect, based on the bidder’s expertise in golf course construction. The Architect knew this bidder’s expertise would be beneficial due to the strict construction schedule of the golf course, as mentioned in a memo from the Architect to the Bureau dated January 27, 1995:

. . . is regarded as the most successful firm in our industry. With our tight schedule, their expertise will be very beneficial.

However, this bid was protested by another Contractor who had also bid on the project and the bid was subsequently disqualified by the Bureau for failure to list the proposed subcontractors and failure to supply information concerning preference laws.

Subsequently, erosion control and irrigation supply specifications were added to the scope of the project and bids were resubmitted in March 1995. After a review of these bid proposals and recommendation by the Architect, the contract was awarded to the lowest bidder.

The Role of the Architect

The Architect is responsible for acting on the Bureau's behalf in ensuring projects are completed in accordance with contract specifications. Also, the Bureau relies on the advice of the Architect (who acts as the State's expert) to shield itself from possible lawsuits. Some of the specific responsibilities of the Architect are as follows:

- Perform site visits on a periodic basis to determine if the work performed is in accordance with the contract specifications in order to protect the interest of the Bureau.
- Guard against defects and deficiencies in the Contractor's work.
- Provide instructions to the Contractor.
- Keep the Bureau apprised of the project.
- Determine if construction schedules are followed.
- Interpret the Contract Documents.
- Certify completion of the project in accordance with the Contract Documents.
- The Architect is not responsible for the Contractor's failure to complete the project in accordance with the Contract Documents.

For more detailed information, see Appendix A, page 2-27.

In summary, although responsible for ensuring the contract specifications are fulfilled, the Architect is not held liable for nonconformity. Ultimate liability for enforcement of the contract lies with the Bureau.

The Role of the Contractor

The Contractor is responsible for supplying all goods and services as outlined in the contract, and to ensure the project is completed in accordance with contract specifications. As stated in the Contract Documents: *"The Contractor shall perform the Work in accordance with the Contract Documents . . ."*

The Role of the DWFP (Using Agency)

In projects where the Bureau serves as the "Owner"(which was the case with the golf course), the "Using

Agency” has no responsibility or authority to intervene in the project. Bureau policies require the “Using Agency” not give any direct instructions to the Contractor. Bureau policies do allow the “Using Agency” to participate in the final inspection once the project is completed.

Even though, according to Bureau policies, the “Using Agency” is included as part of the final inspection, final acceptance of the project is given by the Bureau (whether or not the “Using Agency” concurs).

Section 700.35 of the Bureau Procedure Manual, 1996 Revision states, in part:

The Professional (Architect) will call for a group inspection of the Project with the Bureau, the using Agency, and its governing board for the express purpose of determining the Contractor’s compliance with Contract Documents. . . . Upon completion of all punch list items, the Professional (Architect) will provide a letter recommending acceptance to the Bureau with a copy to the Using Agency and its Governing Board.

As documented in a letter from DWFP to the Bureau dated April 7, 1998, it appears the Bureau policy regarding the final inspection was not followed in the Mallard Pointe Golf Course project:

On April 1 the agency (DWFP) received a “Standard Approval From” from the Bureau of Building indicating final approval of the golf course construction on March 34, 1998 . . . despite (DWFP’s) letter of February 24, 1998, to (Bureau) which . . . pointed out that the agency had not been apprised of a final inspection, a punch list, and a “letter from the processional recommending acceptance to the Bureau, with a copy to the Using Agency and its Governing Board” as common to all projects and as specified in the Bureau of Building Procedure Manual.

It appears the Architect did not provide the Bureau a formal acceptance of the golf course in accordance with Bureau policy. However, the Architect provided the following certification on the request for final payment:

*In accordance with Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that the Work has progressed to the point indicated; that to the best of his knowledge, information and belief, the quality of Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment of the **AMOUNT CERTIFIED**.*

This certification provides some evidence of the Architect’s acceptance of the project.

Did the State of Mississippi receive the project approved by the Legislature in House Bill 1673 of the 1994 Legislative Session?

As a result of no preplanning and inadequate contract management by the Bureau, the State of Mississippi spent more than \$6 million for a substandard project.

As stated in House Bill 1673 the legislature authorized \$5,000,000 for the construction of an 18-hole golf course, **a 9-hole par 3 course**, and various other items related to the golf course. As shown in Table 1 below, the Bureau ultimately paid \$5,382,134 for construction of the golf course and \$1,181,572 for construction of the golf course buildings; totaling \$6,563,706. However, the 9-hole par 3 course as specified in the House Bill currently does not exist.

Table 1

Mallard Pointe Golf Course Construction Expenditures by Funding Source		
Funding Source	Golf Course Expenditures	Golf Course Buildings Expenditures
House Bill 1673, 1994 Session	\$3,895,468	\$1,102,196
Senate Bill 3199, 1995 Session ¹	\$62,617	\$0
Senate Bill 3214, 1995 Session ¹	\$1,424,049	\$79,376
Total	\$5,382,134	\$1,181,572
Total Construction Expenditures		\$6,563,706

Source: Bureau of Building Records

¹ Funds appropriated by the Legislature granting the Bureau discretion in the allocation of funds to existing projects, which included Mallard Pointe.

The Bureau gave the following response to our inquiry of **“Was the project that was authorized in House Bill 1673 and included as part of the contract specifications completed?”**

Response: Yes. . . . An 18-hole golf course with a putting green and driving range, plus a nine (9) hole Par 3 Academy Course was constructed per specifications. Management of the grow-in was not successful and the course suffered severe erosion damage. . . .

Due to the severe erosion during the winter of 1996-97 major repairs had to be made to restore the 18-hole course, putting green, and driving range to a playable condition. Because of limited funds, a decision was made not to bring the Academy back to a playable condition. . . .

Despite the limited funds, the Bureau had a fiduciary duty to protect the interests of the State. The Bureau’s

failure to properly manage and oversee this project resulted in the State of Mississippi spending more than \$6 million for a substandard project.

In addition, DWFP did not believe the golf course was constructed in accordance with contract specifications. DWFP's nonacceptance of the golf course was brought to the Bureau's attention on numerous occasions, as documented below.

A letter dated February 24, 1998 from DWFP to the Bureau stated, in part:

Par Three Course

*This major contractual item was never successfully completed by the contractor. Permanent grassing was never successfully completed, and the Par 3 course is not usable at this time. Considerable erosion remains on the Par 3 course. We understand that the contractor is required to address this issue with the Department of Environmental Quality. **The DWFP can not approve the construction of the Par 3 course in its present condition.***" (Emphasis added by OSA)

A letter dated April 7, 1998 from DWFP to the Executive Director of the Department of Finance and Administration stated, in part:

For the record, the Commission and Department staff do not concur with final acceptance and final payment for this project and remain concerned that expenditures exceeding \$5.25 million have not resulted in a golf course which is in a finished, usable, or playable condition as required in the contract documents.

However, despite DWFP's rejection of the course, the Bureau accepted the project as completed on March 24, 1998. As indicated on page 2-4, the Using Agency has no authority to intervene in a project, including involvement in the decision as to whether or not a project should be accepted by the Bureau. The Bureau provided the following response to our inquiry of **"Did the Bureau of Building accept/approve the project as completed?"**

Response: Yes. August 20, 1999, letter from the Department of Environmental Quality released the contractor from responsibility for erosion control. This completed all responsibilities of the contractor required by the contract, as amended by change orders. Standard Approval Form, dated September 8, 1999 . . . approved final payment and closing of the project.

As a result of the problems noted, such as the failure to properly install erosion control measures (see "Erosion Prevention Measures" on page 2-9) and the planting of grass (see "Grassing" on page 2-13), it appears several contractual obligations on the part of the Contractor were unsuccessful.

**Why has the State of Mississippi not received the project approved by the
Legislature in House Bill 1673
of the 1994 Legislative Session?**

The lack of preplanning, erosion and inadequate contract management by the Bureau resulted in the project not being constructed as specified in House Bill 1673.

As described on page 2-2, the Bureau is responsible for the administration and management of construction projects. As “Owner” of the golf course project, the Bureau had a fiduciary duty to protect the interests of the State by ensuring the project was completed in accordance with the contract specifications.

Problems were identified in the following areas of contract management, contributing to the incomplete golf course:

- Delays in awarding the construction contract (page 2-9);
- Erosion prevention measures (page 2-9);
- Exceeding the contract deadline (page 2-12);
- Planting of grass (page 2-13);
- Grow-in process (page 2-18);
- Change Orders (page 2-19);
- The Bureau’s failure to address liquidated damages (page 2-21); and
- Consideration of the Contractor’s performance bond (page 2-23).

See Appendices B and C, pages 2-29 and 2-31 for a timeline of the construction events.

Delays in Awarding the Construction Contract

As stated by all parties involved, timing of the construction of the golf course was imperative, with delays detrimental to the project. Due to a bid protest, the Bureau was forced to delay awarding the construction contract which extended the project's completion and contributed to the construction problems encountered.

Timing in the construction of a golf course is critical. Any delays can cause significant setbacks in the grassing of the course, and ultimately erosion problems. The Architect was aware of the importance of timing as noted in a memo to the Bureau and DWFP dated November 30, 1994: “. . . construction progress will also be critical. . . .” and a memo to the Bureau and DWFP dated January 19, 1995:

In golf course construction, speed is a trademark of successful operators. If a contractor appears slow at the outset, we are immediately alarmed.

As described on page 2-3, due to a bid protest and the subsequent resubmission of bids, the construction contract was awarded to the lowest bidder in May 1995, approximately three months after the date planned. See Appendix B, page 2-29 for a timeline of construction events.

The first bid proposal information allowed 212 days for construction, meaning the course should have been completed by the end of September 1995. However, the second bid proposal information gave a substantial completion date of July 31, 1996 (approximately 400 construction days). The delay in awarding the contract had a significant impact on the construction schedule, contributing to the erosion problems encountered as described on page 2-9 and the grassing schedule as described on page 2-13.

Erosion Prevention Measures

The Contractor's failure to properly install erosion prevention measures, described in the original contract and communicated to the Contractor on several occasions by DEQ and the Corps of Engineers, resulted in substantial erosion damage and construction delays.

The Contract Specifications state: “CONTRACTOR shall install and maintain erosion control measures as required by the Storm Water Pollution Prevention Plan.” However, the Contractor failed to properly install the erosion control measures, contributing to erosion and washouts on the course. Concerns about the erosion control measures installed by the Contractor were pointed out as early as August 1995, as shown in the Architect's site visit notes distributed to the Bureau and DWFP dated August 29, 1995:

The Corp of Engineers was very displeased with the erosion control program to date. We toured the site and discussed what was the extent of erosion control expected by the corp. The point was well made and they were assured that the necessary measures would be taken to improve the situation.

Construction basically ceased between October 1995 and mid March 1996. In the Spring of 1996 the Corps

of Engineers again expressed their concerns about erosion control in a letter dated March 28, 1996 to DWFP:

The Corps of Engineers is concerned with the current condition and level of effort being made to control erosion throughout the golf course area that is presently under construction.

Although some silt fencing has been constructed, it has not been totally effective and has not been adequately maintained. . . . We are concerned that the continued erosion will further degrade the golf course, the surrounding Corps of Engineers property, and the water quality of Sardis Lake.

In addition, a review by the Department of Environmental Quality (DEQ) in April 1996 identified the improper installation of erosion control measures. Numerous complaints were also made by DWFP regarding the erosion control measures. Specifically, a memo dated April 25, 1996 from DWFP to the Architect states, in part:

As you are aware, the erosion problem on the golf course construction site is a major problem that must be resolved. With recent rains exceeding 3.5 inches, the erosion problems and siltation below the 280' contour has now become a monumental problem. . . .

Obviously, the heavy spring rains combined with the steep slopes and erosive soil have all contributed to this serious problem. Also, in our opinion, the contractor's lack of adequate erosion control measures during the winter and spring months has resulted in this predicament. . . .

In my opinion, we have excellent contract specifications that state clearly and directly what is required of the contractor in order to have successful erosion control. To date, the contractor has not provided erosion control measures in full compliance with the contract specs. The contractor did minimal, temporary grassing, used no check dams, and did practically no tree preservation, water bars, slope drains, mulching, or diversion ditches. . . .

As our professional golf course architect for the State of Mississippi, require that the contractor immediately - without further delays - comply with the terms, conditions, and specifications concerning erosion control as clearly stated in his contract. . . .

Throughout the remainder of the construction, DWFP continued to express their concerns about the Contractor's noncompliance with the contract specifications regarding erosion control.

It should be noted, no Change Orders were issued for the 1995/1996 winter erosion problems. The Contractor did request a Change Order in April 1996 for work related to erosion control measures installed during the winter of 1995/1996, not erosion damages. However, the Change Order was not approved by the

Bureau because they felt the contract specifications were adequate for the Contractor to understand his erosion control requirements. The Contractor waited until the contract deadline had expired before requesting a Change Order for work related to repairing erosion damage. See Appendix D, page 2-33 for a summary of the Change Orders issued.

Bureau's Response

The Bureau gave the following response to our inquiry of **“Was erosion considered unanticipated?”**

Response: Some erosion was anticipated. There was a Storm Water Pollution Prevention Plan which addressed prevention of silt from erosion entering public waters. Erosion was expected and measures were taken to control it.

Original plans anticipated more trees being on the site to protect the slopes than were actually present when construction began. Prior to the start of construction, a major ice storm damaged many trees. The Corps of Engineers, Owner of the property, removed a large number of damaged and destroyed trees and as construction was underway, other trees died and had to be removed. This allowed much more run-off than anticipated at the beginning of the project.

After DWFP did not initiate maintenance on all areas in September, 1996, the Department (Bureau) through, Change Order No. 3 & 4, did an over-seed of a number of areas in an attempt to control erosion during the winter; however, erosion was again more severe than anticipated. In the spring, the Department (Bureau) issued additional change orders to repair erosion damage and to maintain areas as required until DWFP could accept maintenance and grow-in.

While the Bureau explained erosion control measures were put into place, these measures were not adequate to prevent erosion of the course nor did they meet contract specifications, per the Corps of Engineers, DEQ and DWFP. Also, while the Bureau claimed more trees than originally planned were removed from the site, the Corps of Engineers stated in a memo dated September 1996 excess timber was not removed.

Prior to Corp of Engineers marking trees to be cut, . . . had surveyed and marked the areas to be left timbered with flagging and ribbon. . . . I can assure you that the loggers did not remove any timber beyond what was marked for them to remove. This process was checked throughout the logging process. . . .

Therefore, the claim of excess timber removed by the Corps of Engineers was not substantiated.

Again, with no Change Orders requested or granted to repair damage from the Winter of 1995/1996, the Bureau should have foreseen the problems in the golf course construction. In addition, the Change Orders submitted for erosion control repairs were submitted after the contract substantial completion date.

Failure to properly install erosion control measures in the Fall/Winter of 1995 contributed to damages to the

course, and the subsequent expenditure of approximately \$1.5 million to repair these damages. Time spent repairing the course in the Spring of 1996 caused a delay in grassing, which resulted in additional erosion problems (See “Grassing” on page 2-13).

All parties involved were aware of the significance of the erosion control measures defined in the contract, and the potential problems that could occur from them not being installed in accordance with the contract. If the Bureau had taken immediate action once initial erosion problems were identified, by enforcing the contract specifications, the State of Mississippi may have saved much of the approximately \$1.5 million spent to repair the damages due to erosion.

Violation of Substantially Complete Date

The contract bid process described project completion dates as imperative, however construction was not substantially complete by the contract date.

The Contract Specifications state “*The work is to be substantially complete, subject to approved change orders, not later than July 31, 1996.*” However, per review of the “Project Accounting and Tracking System- Project Status Report” dated October 1, 1999, the “substantially complete” date was September 26, 1997, more than one year past the contract date. While Change Orders were issued to add a total of 488 days to the contract (changing the completion date to December 1, 1997), it is important to note 486 of these days were not approved until after the contract date had passed (see Appendix B, page 2-29 for timeline of construction events and Appendix D, page 2-33 for a summary of the Change Orders). The Bureau believes the timeliness of the Change Orders was appropriate per Attorney General’s Opinion 1989-9453 dated September 13, 1989: “*It is the opinion of this office that . . . has authority to approve a change order to allow an extension of time at any time prior to final payment where such an extension is in fact justified by lawful causes.*” However, the specific facts of this Opinion show the contractor requested a time extension only prior to the contract completion date (no additional funds were requested). This Opinion does not apply to Mallard Pointe since the Change Orders involved time extensions with additional funds and the reperformance of work.

The Bureau has a policy regarding time extensions. According to the Bureau manual:

The Contractor must submit with each “Application and Certification for Payment”, or computer generated form, a separate letter stating an Extension of Time for that period of Time is or is not needed. . . . Complete justification such as weather reports or other pertinent correspondence must be included for each day’s request for extension. . . . When fifteen (15) days of lost construction time are accumulated, a change order must be prepared and, only upon the Bureau’s approval, will the Time Extension be given.
(Emphasis added by OSA)

The Contractor submitted requests for time extensions resulting from rain delays with the “Application and Certificate for Payments.” However, the Bureau did not prepare nor approve any Change Orders for those time extensions. The Bureau stated they orally approved the extensions. Therefore, we conclude the

Contractor followed the appropriate policies while the Bureau did not, which in turn results in unapproved time extensions.

As previously documented under “Erosion Prevention Measures” (page 2-9), erosion problems delayed construction, causing work to run past the substantial complete date in the contract. As documented on page 2-13, rainy weather delayed construction, also causing work to run past the substantial completion date. The erosion problems and rainy weather caused delays in grassing the course, which created additional problems (see “Grassing” on page 2-13).

Grassing

Bureau contract specifications allowed the Contractor to plant grass (Bermuda) beyond the industry standard (August 15), resulting in grow-in problems, erosion, and additional expenditures to the State of Mississippi.

The Contract Specifications state: “No grassing shall occur after September without approval from DESIGNER and OWNER; . . .” This section also specified using Bermuda grass on the course. Typically, Bermuda grass planted in late August or September in this region of Mississippi does not have sufficient time for grow-in before winter. It appears the Architect was aware of this, as evidenced in his memo to the Bureau and DWFP dated November 30, 1994:

*If the clearing moves forward without delay and we can begin work on the course six months prior to the latest planting date of **August 15** (marginal), we would need help from Mother Nature to achieve good conditions by year’s end. . . . Any delay in the clearing program or State procedures (not anticipated) could prove fatal to the 1995 schedule.* (Emphasis added by OSA)

An agronomy professor at Mississippi State University stated in October 1996 that the earlier Bermuda grass is planted, the greater probability of winter survival. This professor also provided DWFP a copy of a research paper discussing the effects of the planting date on Bermuda grass winter survival. The general conclusion was that planting after late July did not permit sufficient development time to allow winter survival.

The OSA contacted a turfgrass specialist at Mississippi State University (Wayne Wells, Mississippi State Extension Service Turfgrass Specialist) regarding the latest cut-off date for sprigging bermudagrass. According to the turfgrass specialist:

. . . your main concern is the latest cut-off date for sprigging without danger of losing the newly established turf to winter-kill. . . .

Generally, we can expect sprigs to root and provide a cover (not a dense mature stand) in 8-10 weeks under good growing conditions. This will depend on the site prep, rate of sprigging, moisture and fertility available, and mowing. I am assuming this is to be done at the golf course or other areas of the park that has permanent irrigation and good maintenance equipment. Therefore, I would say that it is possible to go as late as August

1st and with some luck of warm days going into October the turf should establish well enough to withstand a normal winter. However, with adverse conditions during the winter and spring it is even possible to lose well established turf due to winter kill.

Now with that said, my recommendation would be to shoot for a July 15th cut-off date and even earlier would provide better density and maturity of underground rhizomes. .

. .

Therefore, the last planting date of August 15th indicated originally by the Architect and the agronomy professor appears reasonable.

It is unknown why the Architect indicated in the contract specifications a last planting date beyond the industry standard. This discrepancy between the contract specifications and the industry standard would have been moot if the substantially complete date of July 31, 1996 documented in the contract had been met. However, since the course was not substantially complete by July 31, 1996, the industry standard for planting Bermuda grass is relevant and contributed to the erosion problems.

Timing is very important in construction of a golf course, especially time frames for planting grass. The importance of the planting time was expressed by the Architect, who was hired by the Bureau. Delays in the construction process concerned the Architect about planting the grass and the growing season as evidenced in his memo to the Bureau and DWFP dated January 25, 1995:

It is becoming apparent that the schedule for the production of the golf course is risky. Understanding golf development can be reduced to one issue; the growing season.

Warm season grasses (Bermuda) must be imbedded in the soil during warm weather. Once the soils reach a temperature of 64 degrees or lower, warm season grasses cease to develop and they perform marginally just above that temperature. Obviously this happens near the end of September, and whatever grasses have been in the ground for a period of 90 to 120 days prior should be fully covered. Grasses that have been in the ground for less than 90 days will be in a state of semi-coverage and hence an erosion liability. . . . Finally, new grass has a greater risk of cold damage because they do not have deep roots.

. . . within the planting window which occurs from approximately May 15th to September 15th, or at the best October first. By this time, Bermuda grasses begins to go to sleep as far as growth is concerned. . . .

. . . if we would have started on January one, we would be OK because the last grass would have been planted in late July or early August. At least 75 percent of the turf would have been in the ground the prescribed amount of time and the last would be sufficiently covered to not be an erosion liability. . . .

My point is that this is not a matter of starting a month later and opening a month later.

It is that if we delay another month, the time until opening is delayed eight to nine months, and there are some other liabilities involved. There would probably be some loss of grass over the winter as raw sprigs are exposed to the elements and some re-sprigging would be required . . .

Due to a bid protest, the construction of the golf course was delayed approximately three months causing delays in grassing for the 1995 growing year. Over the Winter of 1995 and Spring of 1996, weather caused severe erosion problems on the course (see “Erosion Prevention Measures” on page 2-9). Time spent repairing these problems further delayed the grassing of the course. Bureau records indicated grassing was to begin near the end of May 1996. However, as shown in Table 2 on page 2-17, it did not begin until July 13, 1996, leaving one month to complete grassing within the industry time-frame (August 15th).

Although the contract specifications allowed grassing through the end of September, industry standards did not recommend planting past August 15th. Based on these concerns by DWFP about the grassing of the course, they did not accept any area grassed after the industry standard of August 15th. Although this was against the contract specifications regarding maintenance (“OWNER becomes responsible for maintenance of planted areas upon completion of CONTRACTOR’s initial watering”), DWFP’s refusal of acceptance and maintenance of areas grassed after August 15th, appears foresightful. While it appears the Bureau and the Architect did not foresee the potential problems, DWFP knew the areas grassed after August 15th would not have sufficient time to grow before winter and erosion problems would occur, which was the case. DWFP expressed their concerns many times to the Architect and the Bureau. Specifically, in a memo from DWFP to the Bureau dated September 20, 1996 (a critical time in the process), DWFP states:

At this time the sprigging of the warm season bermuda grass is not complete at the John Kyle Golf Course. This uncompleted area is located on the Par 3 Course. We recognize that the specifications allow grassing in September and even in October if approved by the Golf Architect and the Owner.

However, industry standards recognize that it is not best to plant warm season grasses after August 15. Also, agronomy professors at Mississippi State University have advised us that for the climate zone where John Kyle State Park is located, planting warm season grass sprigs after August 15 is not recommended. There is insufficient time for the sprigs to become established before winter.

Planting this late in September is very unwise in our opinion. This newly planted grass can not grow in to provide full coverage and erosion control in 1996. Erosion during the winter and spring months is probable. We feel this portion of the golf course should now be planted fully in winter grass for erosion control. When the soil temperature reaches 65 degrees, around May 15, 1997, the bermuda grass should then be planted.

. . .

The Bureau did instruct the Contractor near the end of October 1996 to plant winter grass. However, severe erosion still occurred over the Winter of 1996, causing washouts on the course.

As shown in Table 2 on page 2-17, 8 holes of the 18-hole course, the practice range and the Par 3 course were grassed after August 15th. Thus, per industry standards these holes would not have sufficient time to “grow-in” before winter. The results were significant erosion and washouts on these holes, directly attributable to the grassing.

The Bureaus’ acceptance of contract specifications not consistent with industry standards, contributed to the problems associated with the grassing of the course, and the subsequent erosion.

While the Bureau grassed the Academy by the end of September, this date was after the August 15th industry deadline and subsequently the Academy washed away and eroded.

Table 2

Mallard Pointe Golf Course Date Holes Grassed		
Hole #3	July 13, 1996	
Hole #4	July 13, 1996	
Hole #5	July 13, 1996	
Hole #6	July 15, 1996	
Hole #2	August 7, 1996	
Hole #7	August 7, 1996	☎
Hole #8	August 7, 1996	☎
Hole #16	August 7, 1996	
Hole #1	August 10, 1996	☎
Hole #9	August 10, 1996	
Hole #17	August 16, 1996	☎
Hole #10	August 21, 1996	☎
Hole #11	August 23, 1996	☎
Hole #18	August 23, 1996	☎
Hole #12	September 8, 1996	☎
Hole #13	September 10, 1996	☎
Hole #14	September 10, 1996	☎
Hole #15	September 10, 1996	☎
Practice Range	September 13, 1996	☎
Academy (Par 3 course)	September 23, 1996	☎

Source: Bureau of Building Records

Note: Those holes highlighted in red were grassed after the industry standard of August 15th.
Change Orders were issued to correct erosion damage on those holes indicated with ☎.

Grow-In

While grass “grow-in” was discussed in the planning phase, “grow-in” was not part of the Contractor’s responsibilities, resulting in confusion between the Bureau and DWFP which contributed to golf course damage.

During the planning phase of the construction project, “grow-in” was discussed by the Architect, the Bureau, and DWFP. However, “grow-in” was not included in the contract specifications as part of the Contractor’s responsibilities. The Contract Specifications state “OWNER becomes responsible for maintenance of planted areas upon completion of CONTRACTOR’s initial watering.” Technically, since the Bureau was the “Owner” of this construction project, they were responsible for ensuring the “grow-in” of the course was successful. The Bureau delegated the “grow-in” process to DWFP, who contracted with a golf management firm to perform the duties. However, as a result of the grassing problems described under “Grassing” on page 2-13, the “grow-in” of the golf course was not successful, which was beyond the control of DWFP.

The Architect and the Contractor expressed concerns to the Bureau about the golf management firm’s “grow-in” procedures. In a memo from the Bureau to DWFP dated November 7, 1996 the Bureau expressed their concerns about the “grow-in” process.

The maintenance contractor began their grow-in responsibilities but some weeks ago stopped. Since that time, the course has suffered. This office, rather than let the course degenerate, has instructed . . . to do all they can to winterize and maintain the course. With this letter, we ask the Department of Wildlife, Fisheries and Parks to permit and instruct you maintenance contractor . . . to carry out their contractual responsibilities.

However, DWFP’s concerns about the grassing of the course caused them not to assume the “grow-in” responsibilities (see “Grassing” on page 2-13), as documented in an internal DWFP memo dated April 9, 1997:

. . . informed us by memo which holes were accepted by their office. According to contract specifications, we were required to begin maintenance and grow-in of the grass for those areas.

. . . DWFP, per contract specifications, must maintain holes once they were grassed and watered once. Industry standards state that August 15 is the last day recommended for planting grass. Therefore, we only took control of those holes which were grassed prior to that date. . . . the Bureau of Building wanted DWFP to maintain all grassed areas, but we refused since they had been grassed too late and could not be established within the 1996 growing season.

The Bureau provided the OSA the following explanation about “grow-in”:

Grow-in was outside the scope of the construction contract. . . . By contract, the Owner was the Department. However, per the Department’s approved and published Policy and Procedure Manual, Section 700, Paragraph 700.44, Warranty Period, the Using

Agency is responsible for maintenance. It was understood by all parties that the grow-in was the responsibility of the Using Agency through a management firm contracted by the Department of Wildlife, Fisheries and Parks. . . .

It was anticipated that DWFP would accept the responsibility of maintenance and grow-in through their management firm; however, because of limited funding and other considerations, they did not do so. . . .

Although action was taken by the Bureau in the Fall of 1996 to have the Contractor perform maintenance of the course, this action would not have been necessary if the delays in construction caused by the following had not occurred:

- delay in awarding the construction contract (see page 2-9);
- the Contractor's improper installation of erosion prevention measures (see page 2-9);
- construction running past the contract date (see page 2-12); and
- planting grass beyond the industry standard (see page 2-13).

The Bureau should have included "grow-in" as a responsibility of the Contractor. Especially, since it was documented the State did not employ personnel with the expertise in golf course construction or golf course maintenance. By not including this important provision in the Contractor's responsibilities, confusion between the Bureau and DWFP resulted, which contributed to golf course damage.

Change Orders

The Bureau approved more than \$1.5 million in Change Orders to re-perform original contract work.

Section 31-7-13(g) of the Mississippi Code of 1972, Annotated, permits change orders as follows:

In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes.

The Contract Specifications state: "CONTRACTOR shall install and maintain erosion control measures as required by the Storm Water Pollution Prevention Plan." As indicated in Appendix D on page 2-33, the Bureau approved more than \$1.5 million in change orders related to erosion problems. The Bureau gave the following response to our inquiry of **"Was the original scope of work in the Contract Documents changed with the execution of each Change Order?"**

Response: Yes. The reason for a Change Order can be either a change in scope of work

or an extension of time, or both. Scope changes may involve the following: decrease, increase, or changes in the amount of work done. Time extension may be for delays beyond the control of the Contractor such as weather, actions of the Owner or Professional, delivery of material; or increases of time required to accomplish changes in the scope of work. All changes associated with this contract were a result of one, or a combination, of these.

Based on their response, Change Orders #3 through #12 totaling approximately \$1.5 million did not involve an increase or change in the scope of work. In fact, the total work was less than what was originally contracted. It was specifically stated in the contract specifications the Contractor was responsible for erosion control measures. Numerous memos/letters in the project files either at the Bureau or DWFP also document the position that the Contractor was liable for the erosion control and maintenance of the erosion controls, which would include repairs. However, it does not appear the contractor took the necessary steps to avoid erosion problems (see “Erosion Prevention Measures” on page 2-9).

In fact, Attorney General’s Opinion 95-0192 dated April 27, 1995 states, in part: *“It is the long held opinion of this office that such change orders must be necessary or incidental to the scope of the contract as originally bid and must not be a new undertaking outside of the scope of the original contract.”* However, based on analysis of the Change Orders, these were for repairs related to erosion, amounting to approximately 50% of the original contract dollar amount and were not incidental to the contract.

The Bureau’s approval of this \$1.5 million in Change Orders caused the project to exceed the original cost estimate. Therefore, the Bureau reduced the scope of work, by not bringing the Par 3 course to a playable condition.

The Bureau approved \$380,000 in Change Orders after work had been performed by the Contractor.

As indicated in Appendix D on page 2-33, the Bureau approved 7 of the 12 Change Orders after the related work had been performed by the Contractor, totaling approximately \$380,000. Approving these Change Orders after the work had been completed not only violated the Bureau’s written policies, but also appears to be in conflict with Article 4, Section 96 of the Mississippi Constitution.

The Attorney General’s Office (AG) has ruled Change Orders must be approved in advance of the work being performed, as documented in the following Opinions.

Attorney General’s Opinion 93-0633 dated December 13, 1993 states, in part:

*While there are certainly many occasions in which “**change** orders,” are appropriate and authorized pursuant to Section 31-7-13(g), this office has long held that when there has been no official action approving additional work by a contractor in advance, the governing authority is without authority to make payment for that additional work. . . . Furthermore, the Mississippi Constitution of 1890, Section 96 states:*

The Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agency, servant, or contractor, after service rendered or contract made, nor authorize payment, or part payment, of any claim under contract not authorized by law; but appropriations may be made for expenditures in repelling invasions, preventing or suppressing insurrections. . . .

*Therefore, it is the opinion of this office (AG) that to allow a construction contract to be modified without advance **approval** of the Commission would be improper as outlined above.*

Attorney General's Opinion 1999-0160 dated April 9, 1999 states, in part:

*As a general proposition, when there has been no official action approving in advance additional **work** by a contractor, a governing authority is not permitted to pay for the additional **work**.*

Attorney General's Opinion 1999-0466 dated September 17, 1999 states, in part:

*. . . where the plans and specifications of the original contract are modified or the scope of the work changes, the governing authority must approve a **change** order prior to the additional work being done. Otherwise, payment for additional work cannot be authorized.*

The purpose of approving Change Orders prior to the performance of the work is to determine the necessity of the change and if the change is in the best interest of the State. The Bureau should not have approved these Change Orders after the work had already been performed by the Contractor. The approval after the fact resulted in the payment of \$380,000.

Liquidated Damages

It appears the Bureau made a decision to ignore the contractual provision regarding the July 31, 1996 completion date and approve an extension by post construction Change Orders. These actions eliminated any potential for liquidated damages.

Liquidated damages are included in the terms of a contract to protect the interest of the State. Section 800, Article 9.11.1 of the contract between the Bureau and the Contractor provided for liquidated damages in the amount of \$500 a day “ . . . for each calendar day of delay until the work is substantially complete . . . ” According to the Bureau manual:

A recommendation will be made by the Professional covering the assessment of damages on any Project running past the completion date and accumulating liquidated damages. The Bureau will, at final closing, assess and enforce liquidated damages on any Project

running past the completion date and does not have a Change Order approving an extension of Time.

Per Section 500, Article 3.1.1 of the contract between the Bureau and the Contractor: “*The work is to be substantially complete, subject to approved change orders, not later than July 31, 1996.*” The actual “substantially complete” date documented by the Bureau on the “Project Accounting and Tracking System - Project Status Report” dated October 1, 1999 was September 26, 1997, 422 days passed the contract date. However, liquidated damages were not assessed against the Contractor. The Bureau provided the following explanation to the OSA for not assessing liquidated damages:

Contract Specifications, Article 8, Paragraph 8.3 allows for the extension of time by change order for such items as unforeseen conditions, weather, change in scope of work, or other delays beyond the control of the contractor, as determined by the Professional Architect and approved by the Owner. A total of 488 days were added to the contract by approved Change Orders extending the Contract date of completion to December 1, 1997. This extension of time negated the \$500.00 per day liquidated damages.

This contract was let three months late; therefore, these conditions should have been foreseen. Change Orders extending the contract date negate the \$500 per day liquidated damages. Change Order #1 approved June 6, 1996 added 2 days to the contract time, changing the substantially complete date to August 2, 1996 (increasing the scope appears reasonable). The next Change Order requesting additional days (151 days) was not approved until December 6, 1996, after the revised substantially complete date of August 2, 1996 had passed. Therefore, liquidated damages in the amount of \$63,000 (see Table 3, page 22 for calculation) could have been assessed against the contractor, in accordance with Bureau policies. This potential is particularly relevant since a loss of tax dollars occurred due to additional expenses of construction.

Table 3

Calculation of Liquidated Damages	
Calendar Days Between August 2, 1996 and December 6, 1996	126
Times \$500/Calendar Day Liquidated Damages	\$ 500
Total Liquidated Damages	\$63,000

The Bureau has stated they released the Contractor because of a time extension. However, these Changes Orders were made after the contract date of substantial completion, to repair work already completed, not to increase the scope. Therefore, liquidated damages could have been imposed if contract management had been properly utilized. It is important to remember that the Bureau can not release a liability owed to the State. According to Article 4, Section 100 of the Mississippi Constitution:

No obligation or liability of any person, association, or corporation held or owned by this state, or levee board, or any county, city, or town thereof, shall ever be remitted,

released or postponed, or in any way diminished by the legislature, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; but this shall not be construed to prevent the legislature from providing by general law for the compromise of doubtful claims.

In addition, the Attorney General has ruled liquidated damages can not be waived. In Attorney General 's Opinion 94-0077 dated February 28, 1994, the City of Ridgeland asked *"May the City grant additional time for reasons not originally set out in the contract, thus effectively extending the contract time without penalty. . . . May the City . . . charge a lesser amount than the \$200.00 per day liquidated damages provided by the contract."* The Attorney General's Office ruled *"Absent reasonable consideration, we are of the opinion the city can not simply waive such a material contract term."*

By not assessing liquidated damages when reasonable and legal, the Bureau could have violated the Mississippi Constitution by releasing a liability owed to the State. Such actions would, in essence, be a donation which is prohibited by Article 4, Section 66 of the Mississippi Constitution.

Performance Bond

The Bureau noted construction problems early on with erosion issues and completion date issues. Because the Contractor was bonded, the Bureau could have chosen to pursue the Contractor's performance bond to complete the project without additional expense to the State.

The Contractor furnished the Bureau a performance bond in compliance with Section 31-5-51 of the Mississippi Code of 1972, Annotated. A performance bond protects the interests of the State by allowing the Bureau to file a claim with the Contractor's bonding company for the Contractor's failure to adhere to contract specifications. The Bureau policy is: if the Contractor defaults on the contract, the Bureau will cease payment to the Contractor and notify the Contractor's bonding company. Upon notification, the bonding company shall either remedy the default, complete the contract in accordance with the Contract Documents, or procure the completion of the contract.

It appears the Contractor may have defaulted on this contract when he allegedly failed to properly install the erosion control prevention measure in accordance with the contract specifications (see "Erosion Prevention Measures" on page 2-9). However, the Bureau did not cease payment to the Contractor nor consider filing a claim with the Contractor's bonding company. Instead, the Bureau allowed the Contractor to continue construction. DWFP was foresightful of the potential problems, and requested the Bureau notify the bonding company for the Contractor's failure to adhere to the erosion control specifications in the contract. However, no action was taken by the Bureau.

The Bureau gave the following response to our inquiry of **"Why was performance not enforced by going against the contractor's performance bond?"**

Response: The Contractor was still on the job working to complete the project. The Department had no reason to believe he would not continue to do so. To have gone to the bonding company under these circumstances would have placed the Department and the Contractor in an adversarial position and possibly in litigation. If work had stopped until litigation was resolved, the course would probably have been lost to erosion.

While it is obvious that ceasing work may have caused additional problems on the golf course, the Bureau had a fiduciary duty to protect the interests of the State. It appears the Bureau decided to continue paying the Contractor for work already performed over concerns the work would cease and possible litigation would result. If the course had been lost to erosion due to ceasing the work, the Contractor's bonding company should have been liable for the damages.

Recommendations

The OSA makes the following recommendations concerning the Bureau's administration of future construction contracts. In general the Bureau should improve the management of all construction contracts to protect the interest of the State of Mississippi.

1. The Bureau should enforce all aspects of construction contracts for which it is responsible. If the Bureau seeks to change a contract, it should justify and document those changes as in the best interest of the State. This should include contract specifications and completion dates.
2. When the Bureau lacks expertise, an independent consultant should be engaged to substantiate important contract specifications. In the case of a golf course project, an agronomist knowledgeable of the climate in Mississippi should help in planning the construction timeframe and the grassing dates of the course. This should ensure industry standards are included in the contract specifications and possibly reduce the construction risks.
3. The Bureau should not approve Change Orders for work that is already included as part of the original scope of the contract unless the work is unforeseen and necessary. If additional work is required due to the Contractor's fault or contract specification, the Bureau should pursue liability claims instead of Change Orders as the contract requires.
4. The Bureau should ensure all Change Orders are approved prior to the performance of the described work, in accordance with Bureau policies and the opinion of the Office of the Attorney General.
5. The Bureau has the fiduciary obligation to ensure compliance with all contract specifications, including the assessment of liquidated damages. Since the Bureau has no legal authority to release contractors from liquidated damages, the Bureau should review all existing projects to ensure the liquidated damages contractual provision is being enforced, where applicable, or removed from future contracts.
6. When a Contractor fails to perform in compliance with the contract specifications, the Bureau should seek performance from the Contractor's bonding company. If the Bureau determines filing with the bonding company is not necessary, reasons for this determination should be documented in the project files. The Bureau should seek legal counsel for assistance in determining if Contractor nonperformance has occurred and if the bonding company should be notified.

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Appendix A

Responsibilities of the Architect

Section 4.2 of AIA Document A201 - General Conditions of the Contract for Construction, included as part of the official contract documents, provides details on the Architect's administration of the contract.

Section 4.2.2 states, in part:

The Architect will visit the site at intervals . . . to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents.

As stated in Section 4.2.3 of AIA Document A201 - General Conditions of the Contract for Construction the Architect is not responsible for the Contractor's failure to complete the project in accordance with contract specifications.

Section 4.2.3 states, in part:

The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

According to section 700.6 of the Bureau Procedure Manual, 1996 Revision: "*The Professional will be the Owner's representative during construction and until expiration of the Warranty period. The Professional will make on-site inspections as necessary to protect the interest of the Owner and to guard against defects and deficiencies in the Work of the Contractor. All instructions to the Contractor will go through the Professional.*"

Additional responsibilities of the Architect are outlined in Section 2.7 of the "Golf Course Architect Agreement Between Owner and Professional."

Section 2.7.1:

The Professional's relationship to the General Contractor shall be set forth in the General Conditions of the Contract Between the Owner and the Contractor, modified by the Supplemental Conditions of the Owner, or modified by this Agreement. The Professional is responsible for keeping the Owner completely apprised of the Project during the Construction Phase.

Section 2.7.3 states, in part:

The professional services performed for the field component comprise on-site inspection by the Professional and/or Consultants to guard against nonconformity of the work with the Contract Documents and to observe and report on compliance with agreed upon construction schedules.

Section 2.7.5 states, in part:

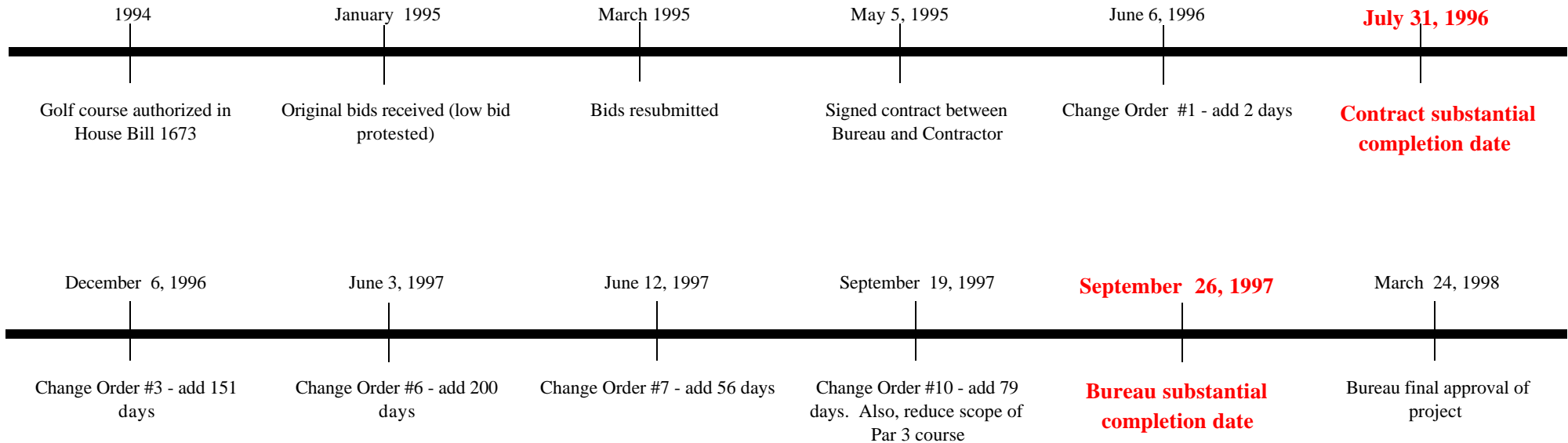
The Professional shall be the interpreter of the requirements of the Contract Documents and judge of the performance thereunder of the Contractor.

Section 2.7.10 states, in part:

*When the Professional is notified by the Contractor that the work has been completed and the Project is ready for inspection, the Professional and Consultants shall conduct a semi-final inspection. The Professional and Consultants shall prepare lists of items needing correction. When these items have been corrected by the Contractor, the Professional and all Consultants shall, with a Representative of the Owner present, make the final inspection and shall **certify to the best of their knowledge to the Owner completion of the Project in compliance with the Contract Documents.** (Emphasis added by OSA)*

Appendix B

Mallard Pointe Golf Course Major Dates from Construction Authorization to Final Approval of Project

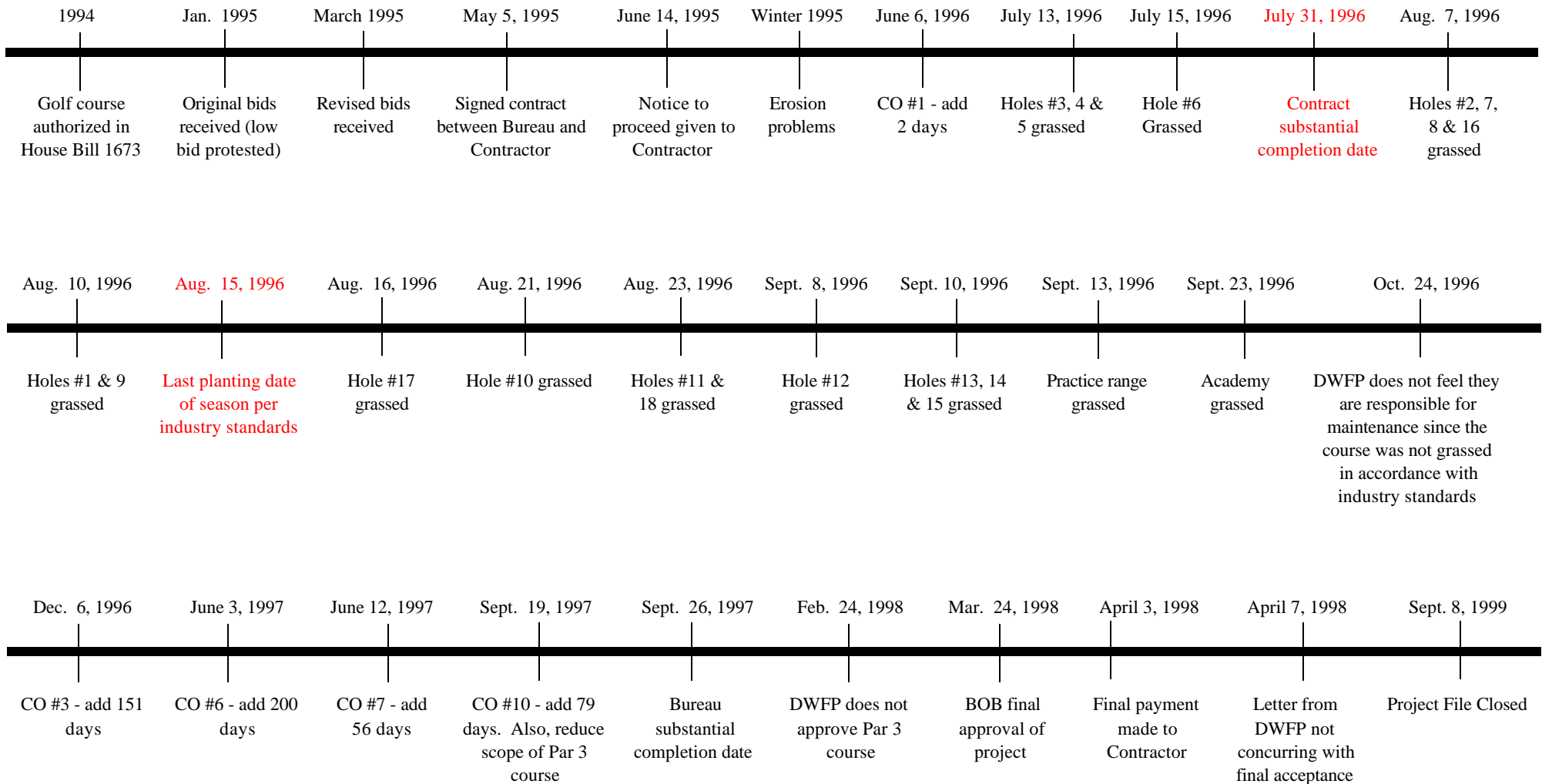


Source: Prepared by OSA based on Bureau of Building records

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Appendix C

Mallard Pointe Golf Course Timeline of Grassing



Source: Prepared by OSA based on Bureau of Building records

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Appendix D

**Mallard Pointe Golf Course
Summary of Change Orders**

Change Order Number	Work Completed or Proposal	Date Approved	Days Added	Change in Contract Sum	Change in Professional Fee	Reason for Change Order
1	May 1996	06-Jun-96	2	\$ (9,191.00)	\$ (643.37)	Delete greens fumigation; relocate pipe & equipment; modify seed mixture.
2	Proposal	15-Nov-96	0	\$ 22,677.00	\$ 1,587.39	Install French Drains on Holes #9 & #18 slopes.
3	Oct. 14, 1996 - Nov. 15,	06-Dec-96	151	\$ 133,481.00	\$ 9,343.67	Erosion control and drainage system maintenance; regrade #18; reinstall French drain #18; seed slopes; repair #18 irrigation; seed and water 70 acres; sod #18 (5000 maintenance fee from October 14, 1996 - November 15, 1996.
4	Nov. 15, 1996 - Jan. 15,	12-Mar-97	0	\$ 37,023.00	\$ 2,591.61	Seed 25 acres; maintenance fee from Nov. 15, 1996 - Jan. 15, 1997
5	Jan. 15, 1997 - Mar. 15, 1997	07-May-97	0	\$ 40,458.00	\$ 2,832.06	Maintenance fee from Jan. 15, 1997 - Mar. 15, 1997; deletion of drainage culvert on hole #13 alternate method for constructing headwalls on golf course
6	Proposal	03-Jun-97	200	\$ 554,350.00	\$ 38,804.50	Repair Bermuda grass (8500 sy sod), driving range and cart paths; repair broken cart paths; credit for deleted concrete in cart paths
7	Proposal	12-Jun-97	56	\$ 116,265.00	\$ 8,138.55	Install erosion control measures; maintenance fee for 8 additional weeks
8	Mar. 15, 1997 - May 16, 1997	22-Aug-97	0	\$ 69,212.00	\$ 4,844.84	Maintenance fee from March 15, 1997 - May 16, 1997
9	July 1997	22-Aug-97	0	\$ 14,280.00	\$ 999.60	Relieve drainage problems
10	Proposal	09-Oct-97	79	\$ 305,558.00	\$ 21,389.06	Complete repair work on holes #1 (2000 sy sod), 7 & 10 (1500 sy sod) and the compensate contractor for additional sod placed in CO#6 (20,000 sy sod)
11	Proposal	15-Oct-97	0	\$ 96,250.00	\$ 6,737.50	Furnish and place 25,000 sy of Bermuda sod
12	Oct. 1, 1998 - Aug. 6, 1999	08-Sep-99	0	\$ 74,618.00	\$ 0.00	Course maintenance fees from October 1, 1998 - August 6, 1999
	TOTALS		488	\$ 1,454,981.00	\$ 96,625.41	

Change Order was approved after the work was completed (totaling \$380,000).

Change Order relates to work included as part of the original contract (Erosion Control - totaling \$1,537,176)

Source: Prepared by OSA from Bureau of Building records

Agency Response



STATE OF MISSISSIPPI
DAVID RONALD MUSGROVE, GOVERNOR

DEPARTMENT OF FINANCE AND ADMINISTRATION

GARY ANDERSON
EXECUTIVE DIRECTOR

March 15, 2001

Honorable Phil Bryant
State Auditor
Post Office Box 956
Jackson, MS 39205

Dear Mr. Bryant:

In response to your performance review of the construction at Mallard Pointe Golf Course located at John Kyle State Park, the Department of Finance and Administration shares your concerns and is appalled at your findings. It is our understanding the relationship between the Department of Finance and Administration and the Department of Wildlife, Fisheries and Parks was contentious during the construction at Mallard Pointe.

However, we have attempted to formulate an accurate response to your queries. As you are well aware, the construction at John Kyle State Park occurred in the entirety during the Fordice Administration. The principals involved at the Department of Finance and Administration during construction being the Executive Director, Deputy Director, and the Director of the Bureau of Building, Grounds and Real Property Management have subsequently resigned and our response to your queries has been based solely on available documents.

Yet, we do feel we must comment on some of the legal issues raised. The Department of Finance and Administration had appropriate authority to address the remedial measures required by change order to salvage the project.

Miss. Code Ann. § 31-7-13(g) provides in part:

In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids . . .

The timeliness of the change orders was also appropriate per MS AG OP. Welch (September 13, 1989) as attached, which provides in part:

Honorable Phil Bryant

March 15, 2001

Page 2

It is the opinion of this office that . . . has authority to approve a change order to allow an extension of time at any time prior to final payment where such an extension is in fact justified by lawful causes. (Emphasis added).

The scope of work recited in the change orders was approved by the Department of Finance and Administration long before the work began and subsequently reduced to writing as reflected by the change orders.

Therefore, the change orders in question were issued according to law and the expenditure valid. The valid change orders mooted the need to assess liquidated damages.

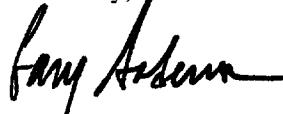
Nevertheless, under the present administration, we have implemented measures to improve contract management. Specifically, staff project managers are required to monitor progress of projects including implementation of any change orders and professionals are required to provide detailed semimonthly construction progress reports with photographs attached via the Internet.

As of January 2001, the Department of Finance and Administration has assessed liquidated damages on three projects and is holding professionals accountable for errors and omissions for services rendered. We are presently assessing costs for mechanical installation work that both the contractor and contracted A/E firm failed to monitor. Further, Department of Finance and Administration, under its new leadership, is aggressively and responsibly enforcing liquidated damages and exerting every effort to assure Mississippians that professional services and construction activities are being performed per specifications and in the best interest of the State of Mississippi.

Finally, upon final receipt of this Performance Audit, the Department of Finance and Administration will request assistance of the Attorney General in addressing any legal issues that may be raised.

Your candid review of past performance will certainly enhance construction contract management in the present as well as the future.

Yours truly,



Gary Anderson
Executive Director

Attachment

GA/bwr

*9453 Office of the Attorney General
State of Mississippi

September 13, 1989

Danny Welch, Esquire
224 North Main
Mendenhall, Mississippi 39114

Dear Mr. Welch:

Attorney General Mike Moore received your request for an opinion and assigned it to me for research and reply. Due to the length of your letter of request, I am attaching a copy of the same hereto and incorporated herein by reference.

Briefly stated, you ask the following question:

Does the Board of Supervisors have authority to issue a change order to allow an extension of time on a construction contract after substantial completion where the contractor made earlier requests for extensions but such requests were not approved by the project architect? (The project architect has now advised the Board that he believes the contractor is entitled to additional time although no specific time has been indicated.)

It is the opinion of this office that the Board of Supervisors has authority to approve a change order to allow an extension of time at any time prior to final payment where such an extension is in fact justified by lawful causes. Whether or not the circumstances enumerated in your letter satisfy this requirement depends in part on the contract terms and an adjudication of fact which is a matter more appropriate for the Board of Supervisors rather than this office.

Very truly yours,

Mike Moore

Attorney General

August 21, 1989

Office of the Attorney General

P.O. Box 220

Jackson, Ms 39205-0220

Attention: Opinion Department

Re: Simpson County Courthouse Renovation project

Dear Sir:

As the attorney for the Board of Supervisors of Simpson County, I request that you render a written opinion concerning the authority of this Board to issue a Change Order regarding liquidated damages arising out of the renovation of the Simpson County Courthouse.

The Board of Supervisors entered into a contract with Leon C. Miles, Contractor, to restore the Simpson County Courthouse, on January 21, 1988. The contract provided for the project to be completed within 300 consecutive calendar days. The contract provided for liquidated damages in the following amounts: \$500.00 per day during the first 15 days following the specified completion date, and \$1000.00 per day after the first 15 days following the specified completion date, until the project was substantially complete.

The restoration project was not substantially complete until March 18, 1989, resulting in liquidated damages of approximately \$95,000.00. According to the contract time, the completion date would have been December 4, 1988.

Although the contractor made written request to the architect on September 22, November 9, November 10, and November 16, 1988, for an extension of time due to various reasons, no specific number of days were requested and no Change Order was ever issued to the Board by the Architect. The contractor continued to make written request to the Architect for unspecified extension of time after the contract completion date had expired but no action was taken.

The previous requests for the unspecified extensions of time by the contractor prior to the completion date would not appear to justify the length of the total delay on the project. Furthermore, the contractor recently advised the Board in writing of various other reasons throughout the contract period which caused his delay and asserts these were based on changes in the work and other factors beyond his control. However, a majority of these changes and factors resulted after the completion date of the contract had already expired. The pertinent language of the contract regarding extension of time is as follows:

"8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of

either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Architect not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work."

***9454** In April, 1989, the contractor requested a payment due of \$72,546.00, leaving a retainage of \$54,835.00 of the total contract price. The Architect has issued his certificate for payment and the surety on the project has consented to the release of these

funds. The Architect has now advised the Board by written correspondence as early as June 23, 1989, that he feels the Contractor is entitled to additional time on the project, although no specific time was indicated.

The Board would like for your office to issue its written opinion concerning whether the Board has the authority at this time to issue a Change Order and allow an extension of time on the above referenced project which would delete all or a portion of the liquidated damages provided under the construction contract, or is there any other authority under which the Board may waive all or a portion of these liquidated damages, assuming that any decision in this matter would be based upon a finding by the Board that the delays experienced by the Contractor were justified under the terms of the contract in view of the foregoing facts.

Your assistance in this matter is deeply appreciated.

Very truly yours,

DANNY WELCH

Section 3 - The Department of Wildlife, Fisheries and Parks



State of Mississippi

A Performance Review of the Management of the Mallard Pointe Golf Course Located at John Kyle State Park

**From the Office of State Auditor
Phil Bryant**

Report # 57
April 16, 2001

Report Summary

At the request of the State Auditor, the Performance Audit Division of the Office of the State Auditor conducted a performance review of the construction and subsequent management of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this review was to determine if the golf course management firm (Firm) was properly monitored during the “grow-in” phase of the course and once it was operational.

Our review found that the Department of Wildlife, Fisheries and Parks (DWFP) should have more carefully monitored the Firm during the “grow-in” phase of the golf course. The Firm’s failure to adequately maintain the course contributed to damages on some of the holes accepted by DWFP. In addition, DWFP should improve the current monitoring of the Firm’s contractual agreement, specifically, the golf course operations and the turf evaluations.

More detailed information is included within the report.



Office of the
State Auditor of Mississippi
Phil Bryant

Report # 57
April 16, 2001

A Performance Review of the Management of the Mallard Pointe Golf Course Located at John Kyle State Park

At the request of the State Auditor, the Performance Audit Division of the Office of the State Auditor conducted a performance review of the construction and subsequent management of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this portion of the review was to determine if the golf course management firm (Firm) was properly monitored during the "grow-in" phase of the course and once it was operational.

This review addressed several issues concerning the management of the golf course at John Kyle State Park.

Findings

1. "Grow-In" Problems (Page 3-4) - The Firm failed to maintain the newly planted grass during the critical "grow-in" phase, while the Department of Wildlife, Fisheries and Parks (DWFP) should have monitored the Firm's performance in a more timely manner and taken corrective action to limit the State's losses.
2. Operations (Page 3-7) - Revenues collected by the Firm are not reviewed in a sufficient manner by DWFP to prevent the possible misappropriation of funds.
3. Condition of Golf Course (Page 3-11) - DWFP does not ensure turf evaluations are performed in accordance with the contractual agreement between DWFP and the Firm.

Recommendations

1. When DWFP contracts for services, DWFP should ensure adequate personnel are employed by the contractor to successfully complete the assigned duty. Also, DWFP should monitor the activities of the contractor to ensure compliance with the contractual agreement.
2. DWFP should either continue to have the independent CPA monitor the receipts and disbursements of the Firm or designate a DWFP employee to review the Firm's financial transactions on a monthly basis. If DWFP continues to use the CPA, DWFP should require the CPA's reviews to be more timely. Timely monitoring of financial records will increase accountability and possibly hinder the misappropriation of funds.
3. DWFP should consider holding a retainage from the last payment due the Firm to cover any outstanding exceptions noted by the CPA. Once the exceptions have been resolved, the remaining balance due the Firm can be paid.
4. DWFP should enforce all aspects of the golf management contract. Specifically, DWFP should ensure the turf conditions are being evaluated in accordance with the contractual agreement of the Firm. Without the expertise provided by the turf consultant, conditions of the course could deteriorate, resulting in an unplayable course.

Contact

Mitchell H. Adcock, CPA, CIA, CFE
Performance Audit Division Director
(601) 576.2800

BRIEF SHEET

Introduction

Purpose

At the request of the State Auditor, the Performance Audit Division (Division) of the Office of the State Auditor (OSA) conducted a performance review of the construction and subsequent management of the Mallard Pointe Golf Course located at John Kyle State Park in Sardis, Mississippi. The purpose of this review was to determine if the golf course management firm (Firm) was properly monitored during the “grow-in” phase of the course and once it was operational.

The performance review will:

- provide background information on the authorization for construction of the golf course;
- provide background information on the selection of the Firm; and
- evaluate the monitoring of the Firm during the “grow-in” phase of the course and once the course became operational.

Scope

The scope of the performance audit consisted of several issues concerning the management of the Mallard Pointe Golf Course at John Kyle State Park. Only the issues regarding the Department of Wildlife, Fisheries and Parks (DWFP) which were found to have merit are detailed in the following report.

Method

In conducting the review, the Division performed the following procedures:

- interviewed appropriate personnel;
- reviewed and analyzed information relevant to the construction and management of the golf course; and
- performed other necessary tests and procedures.

Background

Authorization for Construction of Golf Course

In 1994, the Mississippi Legislature authorized, in House Bill 1673, the construction of a golf course at John Kyle State Park. The Bill authorized \$5,000,000 for

development and construction of . . . an 18-hole golf course, a 9-hole par 3 course, a driving range, practice areas, a clubhouse facility which shall include service of food and beverages, a cart storage facility, maintenance areas and equipment, executive cabins to be used at the park in conjunction with the golf course, and other appurtenances related to the operation of such golf facilities and all furnishings and equipment.



Welcome Sign at Mallard Pointe Golf Course

Selection of the Golf Management Firm

According to DWFP, the agency lacked the expertise and personnel to manage the Mallard Pointe Golf Course; therefore, in an effort to select a golf management firm (Firm) for the operations, maintenance and marketing services of the golf course, DWFP issued a request for proposal (RFP) in 1995. Proposals received by the deadline were reviewed by DWFP, and a determination was made as to whom to award the contract.

Since the contract with the Firm would involve an expenditure of funds exceeding \$100,000, approval was required by the Personal Service Contract Review Board (PSCR). DWFP provided the following justification to the PSCR Board when it completed the Request for Contract Personnel Services Approval:

The services to be rendered under this contract require highly specialized skills in agronomy and turf management, managing the play of golf by the general public, hiring and management of management, teaching and maintenance personnel and other activities associated with the operation of a golf course/golfing facility. The expertise and experience required to perform these services does not exist, at present, in this agency or, to our knowledge, within state government. This firm was selected based on their experience and reputation in the golf industry.

DWFP entered into a contract with a Firm for an initial term of June 1, 1996 to May 31, 1999. Upon expiration of the initial term, a new contract for the period June 1, 1999 to May 31, 2000 was entered into. Presently, the agreement with the Firm is on a month-to-month basis. The basic terms of the agreement between the Firm and DWFP include operating the golf course and maintaining/repairing the golf course and facilities.

DWFP reissued RFP's in the fall of 2000 for a firm to oversee Mallard Pointe Golf Course. A new management firm has been selected and the transition is scheduled for April 1, 2001.

“Grow-In” Problems

The Firm failed to maintain the newly planted grass during the critical “grow-in” phase, while DWFP should have monitored the Firm’s performance in a more timely manner and taken corrective action to limit the State’s losses.

The “grow-in” phase of the golf course began on July 13, 1996, when the first holes were grassed by the construction contractor. The Contract Specifications for the construction of the golf course stated “OWNER becomes responsible for maintenance of planted areas upon completion of CONTRACTOR’s initial watering.” Technically, since the Bureau of Building, Grounds and Real Property Management (Bureau) was the “Owner” of this construction project, they were responsible for ensuring the “grow-in” of the course was successful. However, the Bureau delegated the “grow-in” process to DWFP, who contracted with a Firm to perform the duties.

According to the initial contract between DWFP and the Firm:

(Firm) shall keep and maintain the turf irrigation systems, including the pump house, the trees and shrubs, the greens, fairways and other turf including winter maintenance, in as good or better condition than they were in at the beginning of the Term. . . .

The (Firm) shall be responsible for providing all labor, supplies, materials that are reasonably necessary to assure the proper condition of the greens, tees, fairways, and buildings of the Premises. . . . The work to be done by the (Firm) in connection with the general maintenance necessary to maintain the proper playing condition of greens, tees, and fairways and the winterizing and winter care of said golf course, shall be in accordance with generally accepted greenskeeping methods of the area. . . .

Additionally, the (Firm) shall provide a golf course superintendent who shall function as supervisor for golf course maintenance operations at the park. At a minimum the golf course superintendent shall have under his direction a full-time grounds-keeper, as well as adequate staff for concessions, pro-shop, golf course maintenance, and equipment maintenance, and adequate seasonal and part-time employees as needed.

The “grow-in” phase of a golf course is a very critical time period. The grass must be watered and properly maintained immediately upon planting, to improve the chances the grass will root and survive. If “grow-in” procedures are not satisfactorily performed, the results are detrimental to the golf course.

The Architect and golf course builder both expressed concerns about the watering practices of the

Firm. The main complaint was the Firm's lack of manpower to successfully maintain the newly planted grass. It appears initially DWFP was not aware of the manpower shortage, as documented in a memo from the Architect to the Bureau dated August 6, 1996:

On Thursday I talked to (DWFP) about the staff on hand and the progress of the grassing. (DWFP) told me that he was under the impression that the management company had a full time superintendent and a number of laborers on site. I told (DWFP) that to my knowledge there was not a full time superintendent and that there were no laborers employed by the management company on site.

There is no doubt in my mind that (DWFP) was surprised to learn that the management company did not have as many people on site as he thought they did. He told me that he was going to call the management company to find out what was going on.

The golf course builder expressed his concerns in a memo to the Architect dated August 6, 1996: "... we are also concerned . . . the future holes will not receive the proper attention. The watering practices to protect past, present and future grassing are the issue here."

The Architect's site visit notes dated August 7, 1996, which were distributed to DWFP also discussed the watering practices (these notes indicate monitoring by the Architect, not DWFP):

According to (Firm chief agronomist) there have been periods of time for up to 24 to 36 hours when no one from (Firm) was on site. Based on observations made . . . the sprigs on #6 received very little water on a Sunday (following the planting) until late in the day, when (golf course builder) realized no one from (Firm) was on site. By then they stated some of the holes were very dry.

There was some question marks regarding the turnover point (for maintaining the sprigs, irrigating, etc.) from the contractor to . . . The key is to establish a good line of communication between the (golf course builder) and (Firm) representatives on a daily basis. Both parties should work together at the time of sprigging to ensure the planting is correct and that water is being applied as quickly as absolutely possible.

One last (but not least) concern is the lack of manpower on site for grow-in purposes.

The Architect's concerns about the size of the Firm's maintenance crew and its effects on the course continued throughout October 1996. In the site visit notes prepared by the Architect dated October 31, 1996, the Architect states:

The maintenance crew presently consists of four people including the golf course superintendent. Normally at this stage of the grow in it would be customary to have a full crew on hand. With the amount of work to be done it is very easy to justify a full maintenance crew. Due to the limited amount of staff very little has been accomplished in the last few weeks with regards to repairing washouts, and performing normal grow in procedures such as proper irrigation, fertilizing, frequent mowing.

While DWFP was informed of these issues, they failed to ensure the Firm complied with the contractual agreement to maintain the condition of the course, which included “grow-in.” DWFP did not accept responsibility for holes grassed after August 15th because the last planting date of August 15th was specified by the Architect and an agronomy professor at Mississippi State University contacted by DWFP. The OSA contacted a turfgrass specialist at Mississippi State University (Wayne Wells, Mississippi State Extension Service Turfgrass Specialist) regarding the latest cut-off date for sprigging bermudagrass. According to the turfgrass specialist:

. . . your main concern is the latest cut-off date for sprigging without danger of losing the newly established turf to winter-kill. . . .

Generally, we can expect sprigs to root and provide a cover (not a dense mature stand) in 8-10 weeks under good growing conditions. This will depend on the site prep, rate of sprigging, moisture and fertility available, and mowing. I am assuming this is to be done at the golf course or other areas of the park that has permanent irrigation and good maintenance equipment. Therefore, I would say that it is possible to go as late as August 1st and with some luck of warm days going into October the turf should establish well enough to withstand a normal winter. However, with adverse conditions during the winter and spring it is even possible to lose will established turf due to winter kill.

Now with that said, my recommendation would be to shoot for a July 15th cut-off date and even earlier would provide better density and maturity of underground rhizomes. . . .

Therefore, the last planting date of August 15th indicated by the Architect and the agronomy professor appears reasonable.

Complaints regarding the Firm’s watering practices arose after the first holes were sprigged in July 1996, holes which were the responsibility of DWFP. DWFP had a responsibility to ensure the Firm successfully maintained the grass. When they became aware of the manpower shortage, DWFP should have either demanded the Firm employ additional personnel or should have utilized current employees of DWFP to ensure the grass was properly maintained.

Holes #1, #7, and #8, which had been accepted by DWFP in August 1996, before the industry standard last planting date of August 15th, suffered erosion damage that was repaired by the golf course builder in the summer and fall of 1997. The cost to repair the damage on hole #1 totaled approximately \$18,000 (included in Change Order #10). The cost to repair the damage on holes #7 and #8 was included in Change Orders #6 and #7 and could not be broken out. The damage on the holes may have been prevented if the Firm had successfully maintained the sprigs once originally planted; and if DWFP had monitored the Firm to ensure proper “grow-in” procedures were being followed.

Operations

Revenues collected by the Firm are not reviewed in a sufficient manner by DWFP to prevent the possible misappropriation of funds.

To ensure compliance with contract terms, activities performed and services provided by contractual personnel should be monitored. Contract monitoring provides accountability for expenditures of public funds. In addition, contract monitoring is required by the PSCR Board. PSCR Board Personal Service Contract Procurement Regulation 5-102 states:

Monitoring Contract Performance

The agency head shall ensure that contracts are monitored at least monthly to confirm acceptable performance, timely fulfillment of deliverables and compliance with terms of the agreement.

Duties of the Procurement Officers shall include, but are not limited to the following:

- (1) reviews and approves contract deliverables*
- (2) ensures compliance with contractual terms*
- (3) coordinates the flow of information between the parties*
- (4) responds to request of the contractor*
- (5) monitors disbursements against the contract budget*
- (6) monitors actual progress against work schedules*
- (7) coordinates the furnishing of necessary materials*
- (8) authorizes no cost modifications*
- (9) makes recommendations on modifications involving increased cost*

According to DWFP the operations of the golf course are monitored in several different ways: on-site reviews by DWFP, monthly reporting to DWFP by the Firm, and independent CPA reviews.

On-Site Reviews

Prior to August 2000, a DWFP employee was responsible for monitoring the operations of the Firm on a monthly basis. Per a review of the field observation reports prepared by the employee, it appears the main focus of his reviews were the golf course conditions. Upon his resignation in August 2000, DWFP contracted with an independent contractor for supervisory services at each of the three state-owned golf courses beginning October 12, 2000. According to the contract:

The contractor shall supervise all daily operational and maintenance activities of . . . Mallard Pointe Golf Course. . . . The contractor shall report all findings to the director of parks in a monthly report. . .

The contractor shall be responsible to review and recommend approval or disapproval for all financial, revenue and payment requests submitted by the golf management firm. . . . The financial review shall include green fees, fees for driving range, annual golf fees, and food and beverage fees.

The contractor shall be responsible to review all monthly reports submitted by the golf management firms . . .

The contractor shall make a minimum of one monthly visit to each of the three golf course facilities Based upon his findings, the contractor shall prepare a written report to the director of parks with observations and recommendations for optimum operation and maintenance of the golf course facilities. . . .

The contractor not only reviews the conditions of the course, as described on page 3-11, but also reviews the operations of the Firm. This provides a means to monitor the Firm's compliance with the contract. However, the contractor does not perform a detailed review of revenue to ensure fees collected agree with the amount deposited and reported to DWFP.

Reporting by the Firm

Monthly reporting by the Firm also provides DWFP a means to monitor the Firm's performance. Monthly reporting is required per the Firm's contractual agreement with DWFP. Section 21 of the agreement states:

The CONTRACTOR will provide the DEPARTMENT appropriate statistical records regarding activity at and use of the contracted premises by the public on a monthly basis. . . . Such records and information shall include the number and category of golf rounds played, the categories and numbers of passes sold, a copy of a daily register/sign-up sheet for players paying green fees, and any other information requested by the DEPARTMENT

relating to the recreational use of the facilities by the public. To be included in each monthly report will be a section listing all operating expenses. . . .

The DWFP Director of Parks performs a cursory review of the monthly report. Also, the Firm submits a weekly listing of deposits and a monthly report of revenue to the DWFP accounting department. The DWFP accounting department reconciles the reports to the bank statements. In addition, DWFP relies on an independent CPA to perform a review of the Firm's financial transactions.

Independent CPA Review

The contractual agreement between the Firm and DWFP states in Section 20 *"All books, records, journals, accounts, and ledgers shall be provided to an independent Certified Public Accountant for their review on a quarterly basis, . . ."*

The financial records of the Mallard Pointe Golf Course are reviewed on a monthly and yearly basis by an independent CPA. The contractual agreement between DWFP and the CPA describes the scope of services as:

. . . to review the books of the management entity managing the state-owned golf courses at Percy Quin and John Kyle State Parks. ACCOUNTANT agrees to review receipts and disbursements for compliance with the golf course management contracts.

Based on inquiries with DWFP personnel, it appears they are not fully aware of the specific duties performed by the CPA. Therefore, the OSA contacted the CPA to inquire of her specific duties as they relate to Mallard Pointe Golf Course.

In order to conduct the monthly review, the Firm mails original documentation to the CPA. This documentation is not submitted in a timely manner. For instance, the CPA stated she received January 2000 to June 2000 documentation in February 2001, over six months past the transaction date. The monthly review basically involves procedures to ensure the spreadsheet prepared by the Firm and submitted to DWFP is accurate; and the expenditures paid with state funds are proper. No review is made by the CPA to ensure agreement between the amount collected and the amount deposited in the bank. However, DWFP accounting staff verify agreement between the Firm's spreadsheet and the amounts deposited.

The fiscal-year-end review consists of: examining the expenditures to determine compliance with the contract between the Firm and DWFP, examining payroll expenditures, and examining a sample of revenues to determine if the correct amount of golf revenue was reported to DWFP. Upon completion of the review, the CPA submits a Report on Agreed-Upon Procedures to the DWFP Director of Parks, which details the findings and identifies amounts requiring repayment by the Firm. As also noted with the

monthly reviews, the yearly review is not performed in a timely manner. The fiscal year 1999 report was not issued until February 2000 (7 months past the fiscal-year-end), and as of March 8, 2001, the fiscal year 2000 report has not been completed (8 months past the fiscal-year-end). According to the CPA she will complete the fiscal year 2000 report after tax season is over.

While the CPA reviews provide some assurance the Firm's receipts and disbursements comply with the contractual agreement, the timeliness of the reviews limits the relevance of the data. In order to deter the misappropriation of funds, any review of transactions should be performed in a timely fashion.

The fiscal year 1999 review released in February 2000 by the CPA, indicated \$5,491.79 should be reimbursed by the Firm to DWFP. As of January 2001, repayment had not been made. The OSA Agency Division noted this problem in the fiscal year 2000 Financial Audit Management Letter dated January 31, 2001. The following is an excerpt from that letter:

Our review of the CPA report on the company's management, operation and maintenance of the golf courses for fiscal year 1999 revealed \$5,941.79 in identified exceptions against the company. However, agency personnel could not provide documentation of receipt of amounts identified in the exceptions report.

DWFP's response to this finding was "Collection efforts are in process to collect all money that is owed to the agency." These collection efforts are taking place approximately 1 year after the exception was noted by the CPA. DWFP's failure to require the Firm to repay amounts noted as exceptions by the CPA weakens accountability. The DWFP should ensure exceptions noted by the CPA are resolved in a timely manner. Also, documentation supporting the resolution of all exceptions should be maintained for review by the CPA and the OSA.

The OSA Agency Division also noted in the fiscal year 2000 Financial Audit Management Letter controls over golf course revenue should be strengthened. The OSA Agency Division noted instances in which the total receipts collected did not agree with the amounts deposited. The following is an excerpt from that letter:

While performing testwork on golf revenues, we noted three instances at the Mallard Pointe Golf Course in which receipt amounts recorded on the tee sheets, or sign-in sheets, were more than the amount recorded on the Daily Report and deposited to the bank. The differences totaled \$770 and could not be traced to subsequent deposit or be otherwise accounted for by golf course personnel.

We also noted two additional instances in which the total receipts for July 23, 1999 and July 24, 1999 listed on the weekly listing of daily deposits could not be traced to subsequent deposit to the bank. After inquiry of agency and golf course management personnel, we

were informed that a burglary was reported by the Mallard Pointe Golf Course manager. Funds totaling approximately \$4,500 to \$5,000 were reported stolen. Of this amount, \$2,419.10 had been identified by golf course personnel as golf fees due to the state. Following the report of theft, the golf course management company dismissed the golf course manager (because of poor management skills, poor marketing of the course, and the recent theft) and pursued a claim against the bonding company which was subsequently denied. To date, it appears the Department of Wildlife, Fisheries and Parks has not been reimbursed by the management company for the missing funds.

Agency personnel should perform on-site monitoring visits to the golf course on a periodic basis. As part of these visits, a review should be performed to compare totals per the tee sheets to the daily report, the weekly listing of daily deposits and the deposits documented by the bank statement. Any differences should be investigated and a resolution should be documented. We further recommend the agency follow up and report to this office on the disposition of the \$770 discrepancy noted in the accounting records as well as the \$2,419.10 in missing deposits.

DWFP's response to this finding was *"The Internal Affairs Staff is preparing monitoring review procedures to implement a review process on the Golf Course Revenue that should start in the near future. Collection efforts are in process to collect all funds that are due the agency."* These collection efforts are taking place approximately 1 ½ years after the theft occurred.

DWFP should either continue to have the independent CPA monitor the receipts and disbursements of the Firm or designate a DWFP employee to review the Firm's financial transactions on a monthly basis. If DWFP continues to use the CPA, DWFP should require the CPA's reviews to be more timely. Timely monitoring of financial records will increase accountability and possibly hinder the misappropriation of funds.

As noted on page 3-3, a new management firm will take over the course beginning April 1, 2001. Since the reviews by the CPA are not timely and amounts requiring repayment by the Firm are normally identified, DWFP should consider holding a retainage from the last payment due the Firm to cover any outstanding exceptions noted by the CPA. Once the exceptions have been resolved, the remaining balance due the Firm can be paid.

Condition of Golf Course

DWFP does not ensure turf evaluations are performed in accordance with the contractual agreement between DWFP and the Firm.

The contract between DWFP and the Firm states *"... a consultant approved by DWFP shall prepare*

a detailed written report containing the results on an evaluation 2 times per year of the turf conditions.” The OSA requested the turf evaluation reports from DWFP. Based on a review of the information submitted to OSA, it appears turf conditions are not being reviewed in accordance with the contractual agreement. The information submitted to the OSA was merely soil evaluations and not evaluations of the turf conditions. Per a letter dated January 19, 2001 from DWFP to the OSA:

Mississippi State University’s turfgrass experts have provided technical assistance since construction began on the golf courses. Recently, . . . turfgrass specialist, Mississippi State University’s extension services, made an inspection of turf conditions at Percy Quin State Park’s golf course. He will likewise inspect Mallard Pointe in the near future. Additionally, the extension service has prepared recent soil test reports which are conducted each year.

DWFP (either staff members or an independent contractor) does conduct on-site reviews of the golf course on a monthly basis, which are documented by field observation reports. During these visits, the conditions of the course are reviewed and pictures/videos may be made to provide a visual of the course conditions. Upon the resignation of the employee primarily responsible for monitoring the Firm, DWFP contracted with an independent contractor to perform supervisory services at the golf course beginning October 12, 2000. As part of the scope of services included in his contractual agreement, conditions of the golf course are reviewed. The following is an excerpt from the contractual agreement:

The contractor shall be responsible for the inspection of golf facilities, cart paths, irrigations systems, pumping systems, buildings, parking areas, and adjacent grounds including landscaping and trees. . . . The contractor shall coordinate, monitor, and review all soil testing . . .

The independent contractor performs reviews on a monthly basis and submits a written report to DWFP detailing his findings and recommendations. In addition, per DWFP, additional park staff including the park director, district park managers, park managers, and assistant park managers assigned to the John Kyle State Park also monitor turf conditions and operations of the course. Additionally, two employees of the DWFP Planning and Construction Office observe overall conditions of the golf facility whenever their schedules permit.

While reviews by the independent contractor and DWFP staff are necessary to maintain an on-going evaluation of the course conditions, DWFP should also ensure the turf conditions are being evaluated in accordance with the contractual agreement of the Firm. Without the expertise provided by the turf consultant, conditions of the course could deteriorate, resulting in an unplayable course.

Recommendations

1. When DWFP contracts for services, DWFP should ensure adequate personnel are employed by the contractor to successfully complete the assigned duty. Also, DWFP should monitor the activities of the contractor to ensure compliance with the contractual agreement.
2. DWFP should either continue to have the independent CPA monitor the receipts and disbursements of the Firm or designate a DWFP employee to review the Firm's financial transactions on a monthly basis. If DWFP continues to use the CPA, DWFP should require the CPA's reviews to be more timely. Timely monitoring of financial records will increase accountability and possibly hinder the misappropriation of funds.
3. DWFP should consider holding a retainage from the last payment due the Firm to cover any outstanding exceptions noted by the CPA. Once the exceptions have been resolved, the remaining balance due the Firm can be paid.
4. DWFP should enforce all aspects of the golf management contract. Specifically, DWFP should ensure the turf conditions are being evaluated in accordance with the contractual agreement of the Firm. Without the expertise provided by the turf consultant, conditions of the course could deteriorate, resulting in an unplayable course.

Agency Response



**MISSISSIPPI
DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS**

**SAM POLLES, Ph. D
Executive Director**

PERFORMANCE AUDIT FINDINGS

March 23, 2001

Honorable Phil Bryant, State Auditor
Office of the State Auditor
State of Mississippi
Post Office Box 956
Jackson, MS 39205-0956

Dear Mr. Bryant:

We are pleased to have the opportunity to respond to the findings in this performance audit:

- 1) The Firm failed to maintain newly planted grass during the critical "grow-in" phase, while DWFP should have monitored the Firm's performance in a more timely manner and taken corrective action to limit the State's losses.**

Since the contract for the construction of the golf course was handled by the Bureau of Buildings, Grounds and Real Property Management it is our opinion that the responsibility for ensuring that all phases of the construction contract was correctly performed and remained with the Bureau of Buildings, Grounds and Real Property Management.

The Department of Wildlife, Fisheries and Parks (DWFP) handled this project as they do all building projects. Site visits were made periodically throughout the construction process to ensure that the construction was proceeding normally and the agency's interests were being properly maintained.

DWFP discovered several problems with this construction project. Several instances in which the construction was not being carried out according to the specifications set forth in the contract were discovered and memos were sent to the Bureau of Buildings, Grounds and Real Property Management stating the findings (copies available). We advised the Bureau of Buildings, Grounds and Real Property Management that we did not feel the contract was being properly executed and that the complete contract amount should not be paid.

It was the decision of the Bureau of Buildings, Grounds and Real Property Management made against the recommendation of DWFP, to pay the full contract amount to the builder and release them from the contractual obligation. The course was then transferred to the Department of Wildlife Fisheries and Parks in an unusable condition. Because of this premature acceptance and transfer,

the Department of Wildlife was forced to enter into a contractual agreement with the golf management firm, Magnolia Golf, earlier than originally planned. The course condition also forced the Department of Wildlife to restructure the agreement requiring Magnolia Golf to manage the "grow-in" phase.

While DWFP does concur that the "grow-in" phase of the course was improperly handled by all concerned, we do not believe that the whole construction contract was handled properly.

Operations

- 2) **Revenues collected by the Firm are not reviewed in a sufficient manner by DWFP to prevent the possible misappropriation of funds.**

The agency retained a CPA firm to monitor revenue collections and expenditures of the management firm. Procedures were agreed upon by DWFP and the CPA firm.

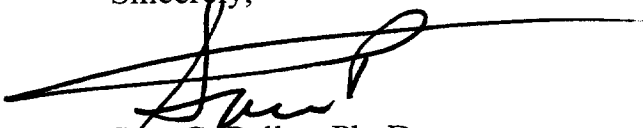
The agency is currently in the process of contracting with a new management firm to manage the courses. The new contract will revise the procedures in place and call for daily reporting of revenues by the management firm. In addition, the agency's internal audit staff will perform periodic on site reviews of revenue collections to ensure that the highest degree of internal control over revenue collections is maintained.

- 3) **DWFP does not ensure turf evaluations are performed in accordance with the contractual agreement between DWFP and the Management Firm.**

A parks staff member was charged with making periodic visits to monitor the agency's golf courses from the time construction began until his resignation in September 2000. The main focus was to review golf course conditions and included turf evaluations. In October 2000 an independent golf contractor was hired to oversee all aspects of the golf course operations. His duties include making at least one (1) visit per month to all DWFP golf courses. The visits are to ensure that the courses are being properly managed and maintained (including the supervision of soil testing and reporting on the turf quality) at each course. The results of these inspections are available for review.

We want to thank your audit staff for their professional approach to our audit. We consider this input to be a real benefit to the agency.

Sincerely,



Sam G. Polles, Ph. D.
Executive Director

Follow-up to Agency Response

**Follow-Up to Department of Wildlife, Fisheries and Parks (DWFP)
Response to the Mallard Pointe Performance Review**

The Office of the State Auditor (OSA) received DWFP's response to the draft performance review "*A Performance Review of the Management of the Mallard Pointe Golf Course Located at John Kyle State Park*" on March 23, 2001. In this response, DWFP acknowledged there were problems with the "grow-in" phase of the golf course. Specifically, DWFP stated: "*the 'grow-in' phase of the course was improperly handled by all concerned, we do not believe that the whole construction contract was handled properly.*" As a follow-up to DWFP's response to the "Operations" and "Condition of Golf Course" findings we spoke with Fred Robinson, DWFP Planning and Construction, on March 28, 2001.

In the draft report the OSA recommended "*DWFP should consider holding a retainage from the last payment due the Firm to cover any outstanding exceptions noted by the CPA.*" According to Mr. Robinson, DWFP is holding the last payment due the golf management firm (Firm) and is holding the Quail Hollow Golf Course revenue sharing amount owed the Firm in order to satisfy any outstanding items at the expiration of the Firm's contract.

In addition, in the draft report the OSA recommended "*. . . DWFP should ensure the turf conditions are being evaluated in accordance with the contractual agreement with the Firm.*" According to Mr. Robinson a turf evaluation involves a visual inspection of the course and a soil analysis. The independent contractor (contractor) hired by DWFP performs the visual inspection, while the Mississippi State University Extension Service performs the soil analysis. The contractor is present at the soil analysis to verify each tee and green is tested. According to Mr. Robinson the contractor has been in the golf business for approximately 20 years, and has previous experience as golf director at several facilities. DWFP believes the contractor is qualified to perform the visual inspection of the course. Also, DWFP believes the visual inspection performed by the contractor and the soil analysis performed by the Mississippi State University Extension Service are sufficient means to monitor the turf conditions.
